



# New Administrative Process

Josh Baker, Administrative Attorney



# Public Chapter 289



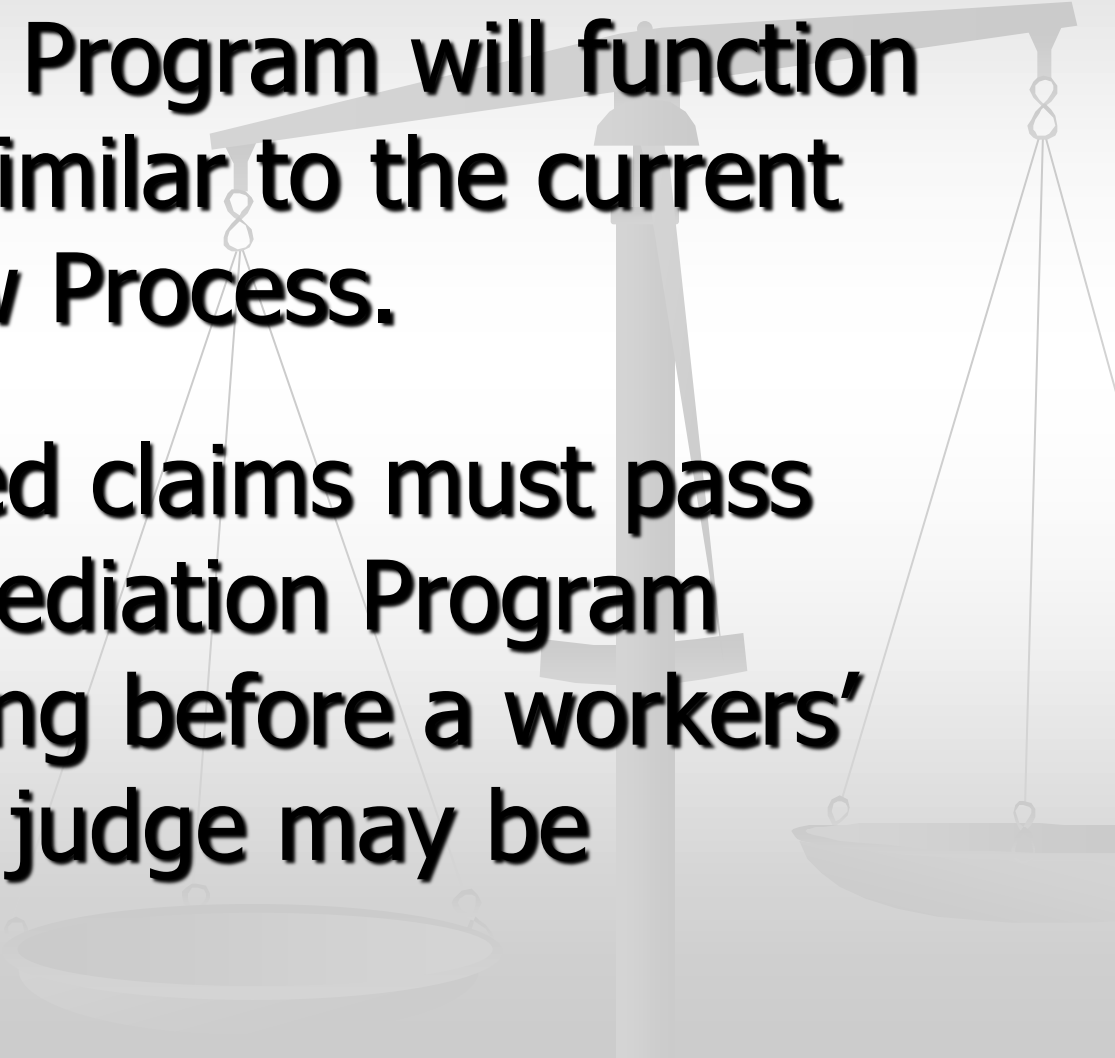
**An Overview of the Workers'  
Compensation Administrative  
System**

# Tennessee Administrative System

**The Tennessee Administrative System consists of four parts:**

- 1. The Workers' Compensation Mediation Program**
- 2. The Court of Workers' Compensation Claims**
- 3. The Board of Workers' Compensation Appeals**
- 4. The Ombudsman Program**

# The Workers' Compensation Mediation Program

- The Mediation Program will function in a capacity similar to the current Benefit Review Process.
  - All controverted claims must pass through the Mediation Program before a hearing before a workers' compensation judge may be scheduled.
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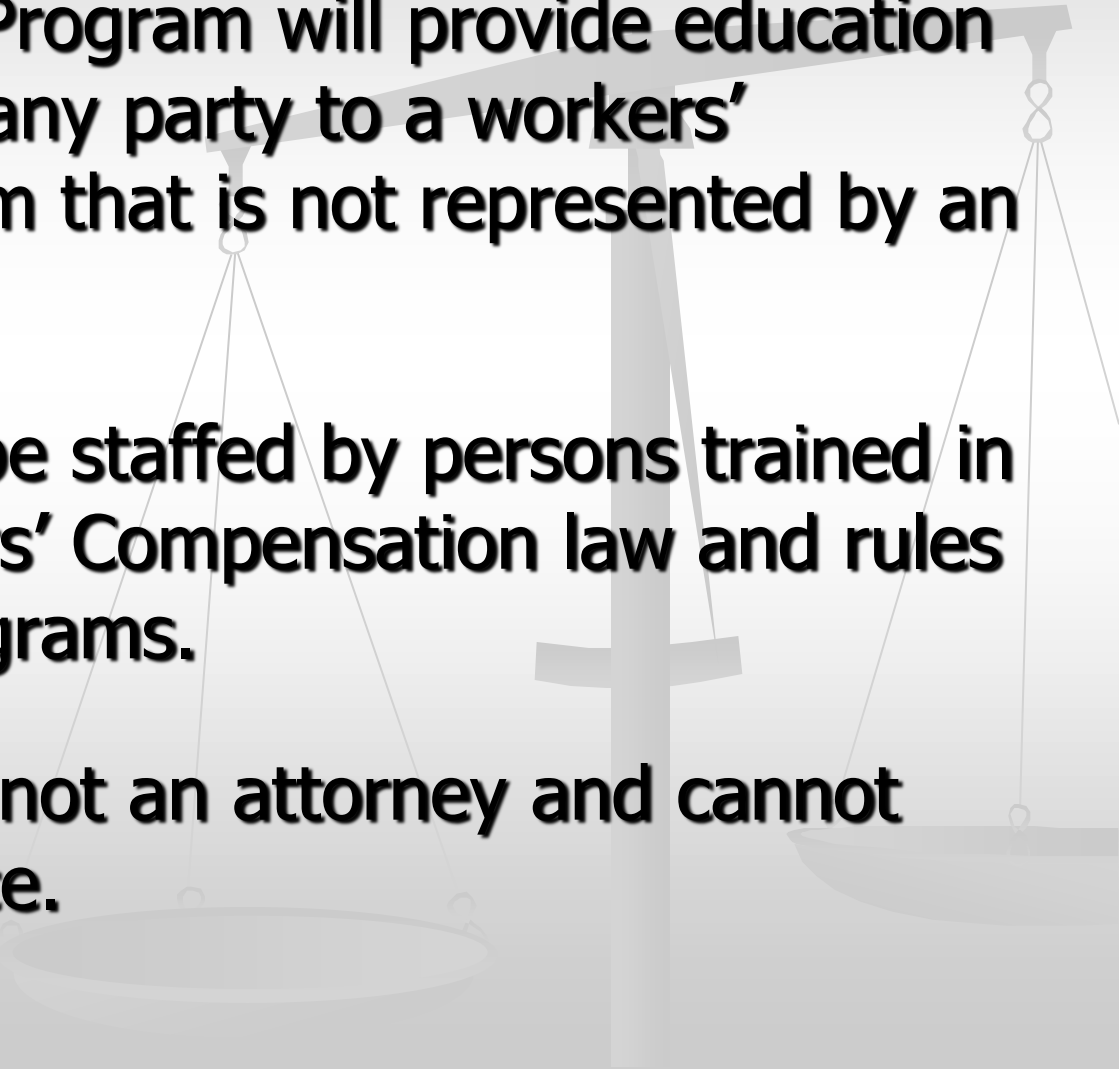
# The Court of Workers' Compensation Claims

- The Court of Workers' Compensation Claims will be the sole forum for the adjudication of contested workers' compensation issues.
- The Court will be staffed by workers' compensation judges and will have a full-time clerk.

# The Board of Workers' Compensation Appeals

- The Board of Workers' Compensation Appeals will render decisions on appeals of temporary and permanent compensation decisions and will operate as a wholly separate entity from the Court of Workers' Compensation Claims.
- The right of appeal to the Supreme Court will not be affected.

# The Ombudsman Program

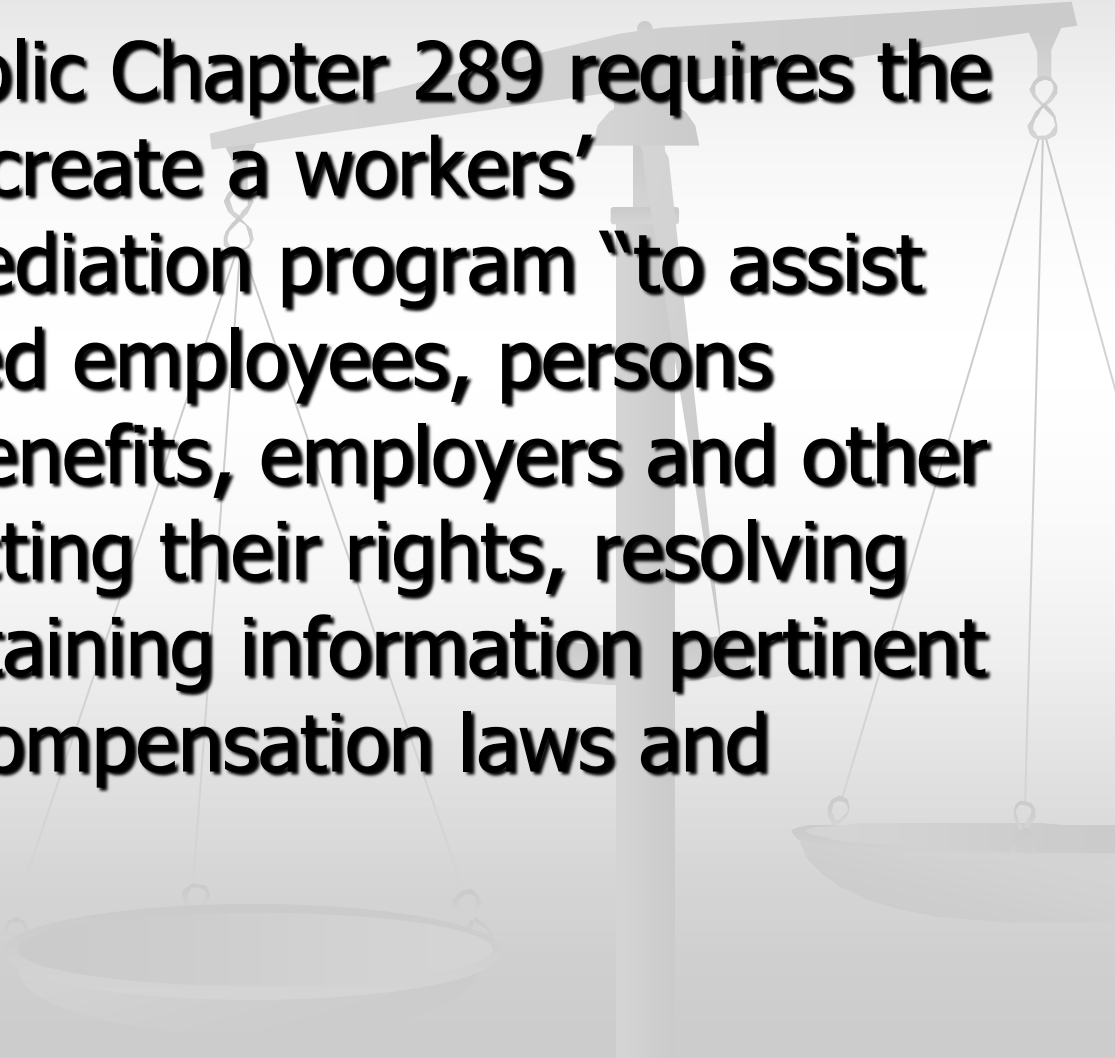
- The Ombudsman Program will provide education and assistance to any party to a workers' compensation claim that is not represented by an attorney.
  - The program will be staffed by persons trained in Tennessee Workers' Compensation law and rules of the various programs.
  - An ombudsman is not an attorney and cannot provide legal advice.
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# The Workers' Compensation Mediation Program



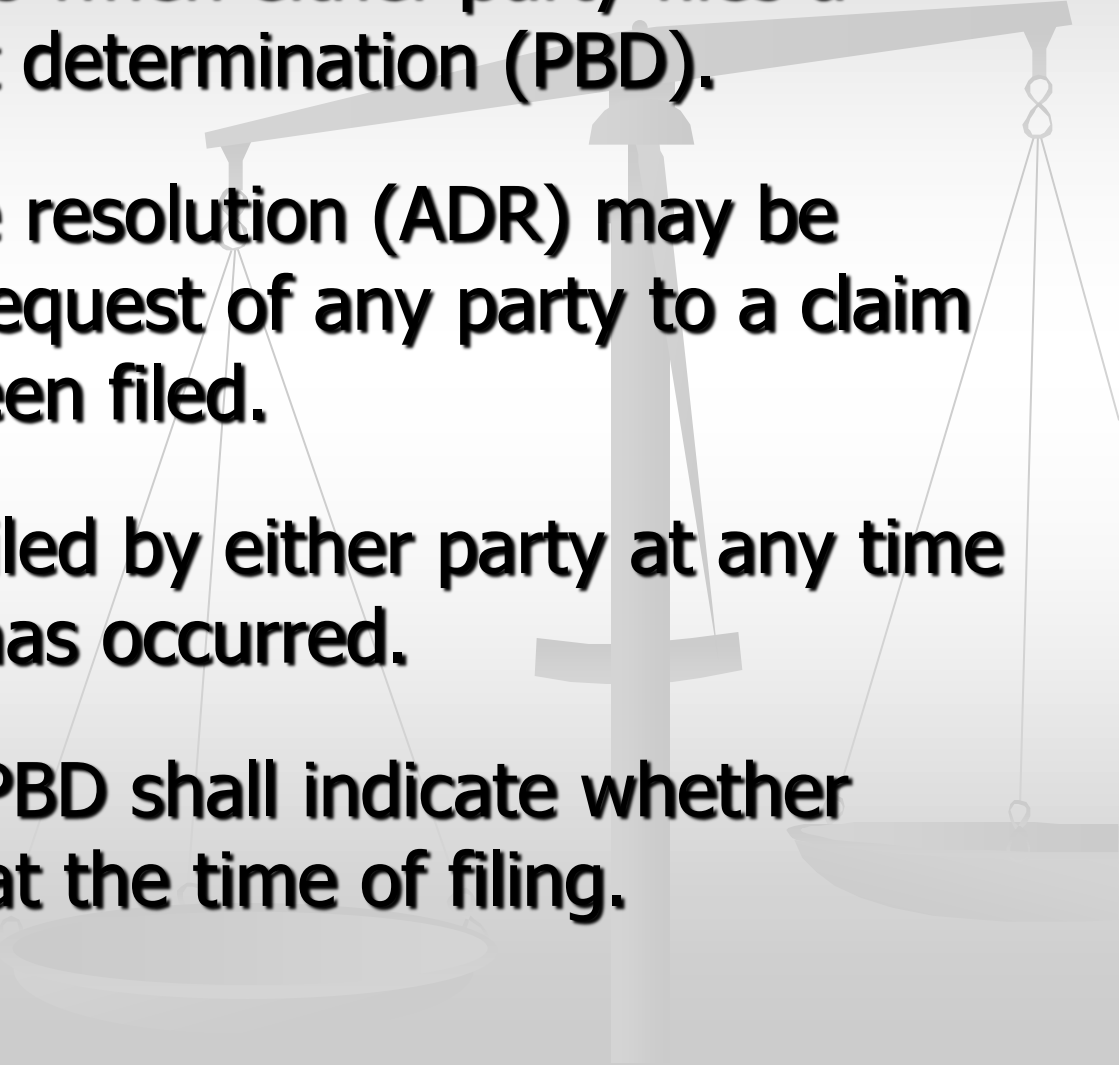
# Creation of the Mediation Program

**Section 76 of Public Chapter 289 requires the Administrator to create a workers' compensation mediation program "to assist injured or disabled employees, persons claiming death benefits, employers and other persons in protecting their rights, resolving disputes, and obtaining information pertinent to the workers' compensation laws and practices."**

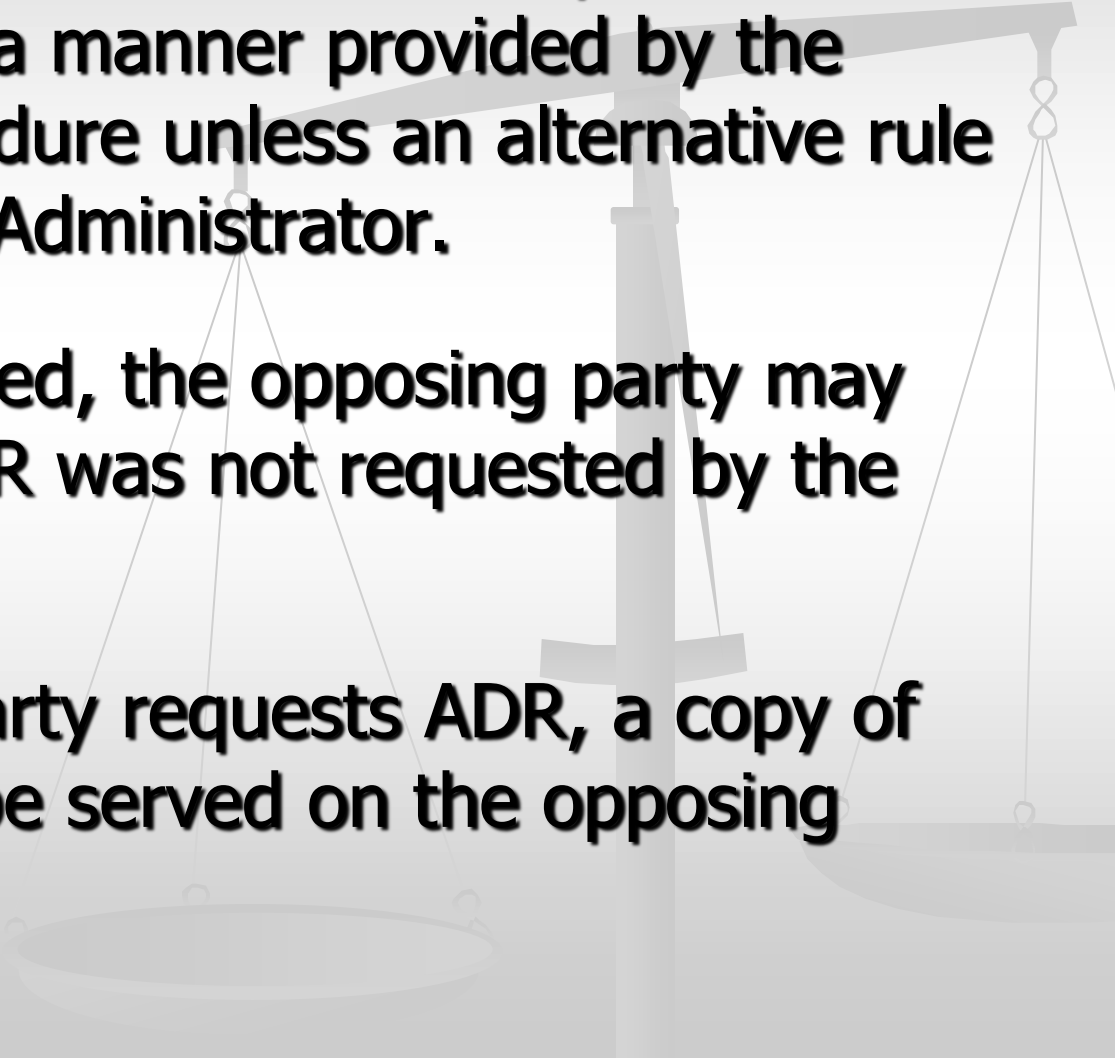




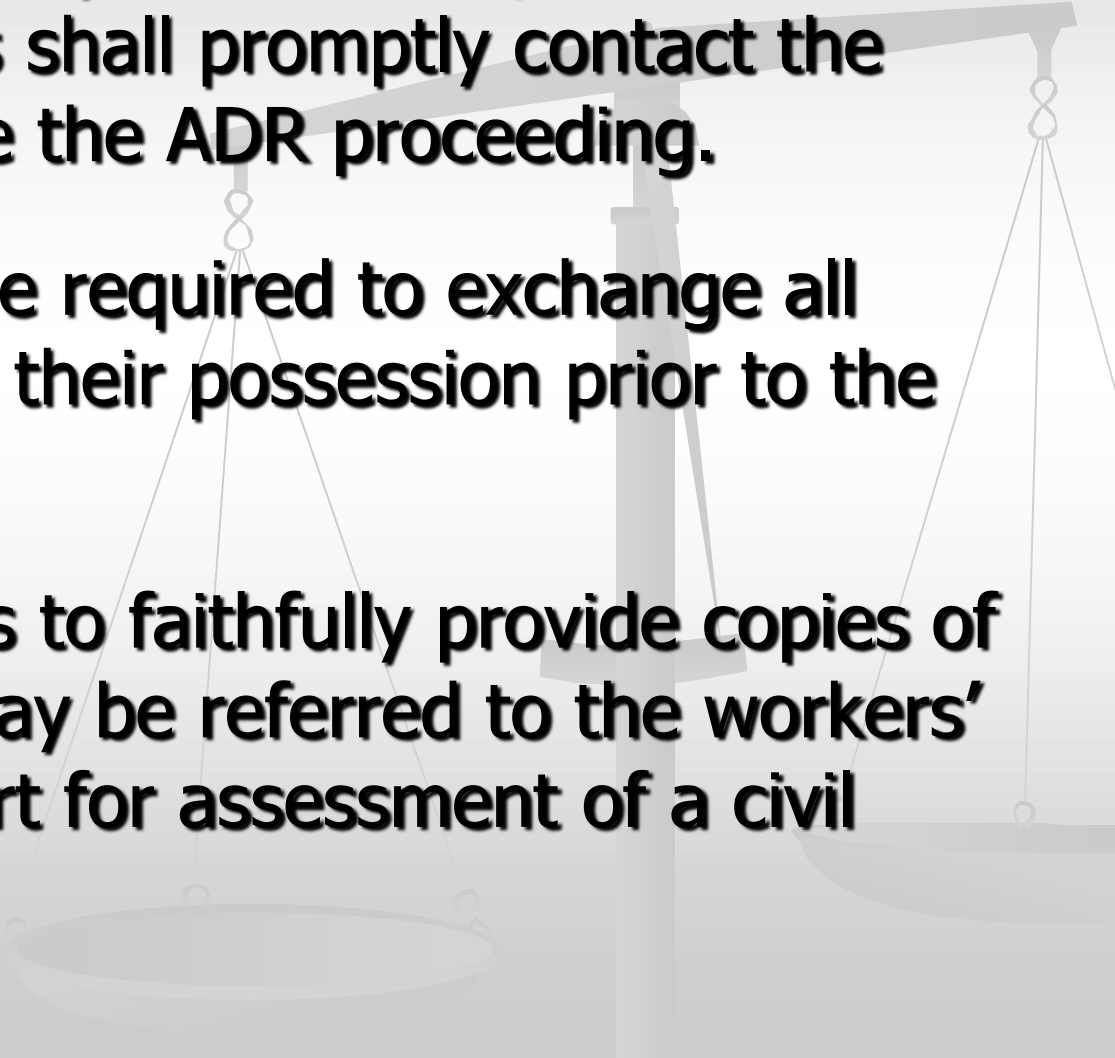
# Mediation Proceedings

- The process begins when either party files a petition for benefit determination (PBD).
  - Alternative dispute resolution (ADR) may be scheduled at the request of any party to a claim after a PBD has been filed.
  - The PBD may be filed by either party at any time after an accident has occurred.
  - The party filing a PBD shall indicate whether ADR is requested at the time of filing.
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# Mediation Proceedings

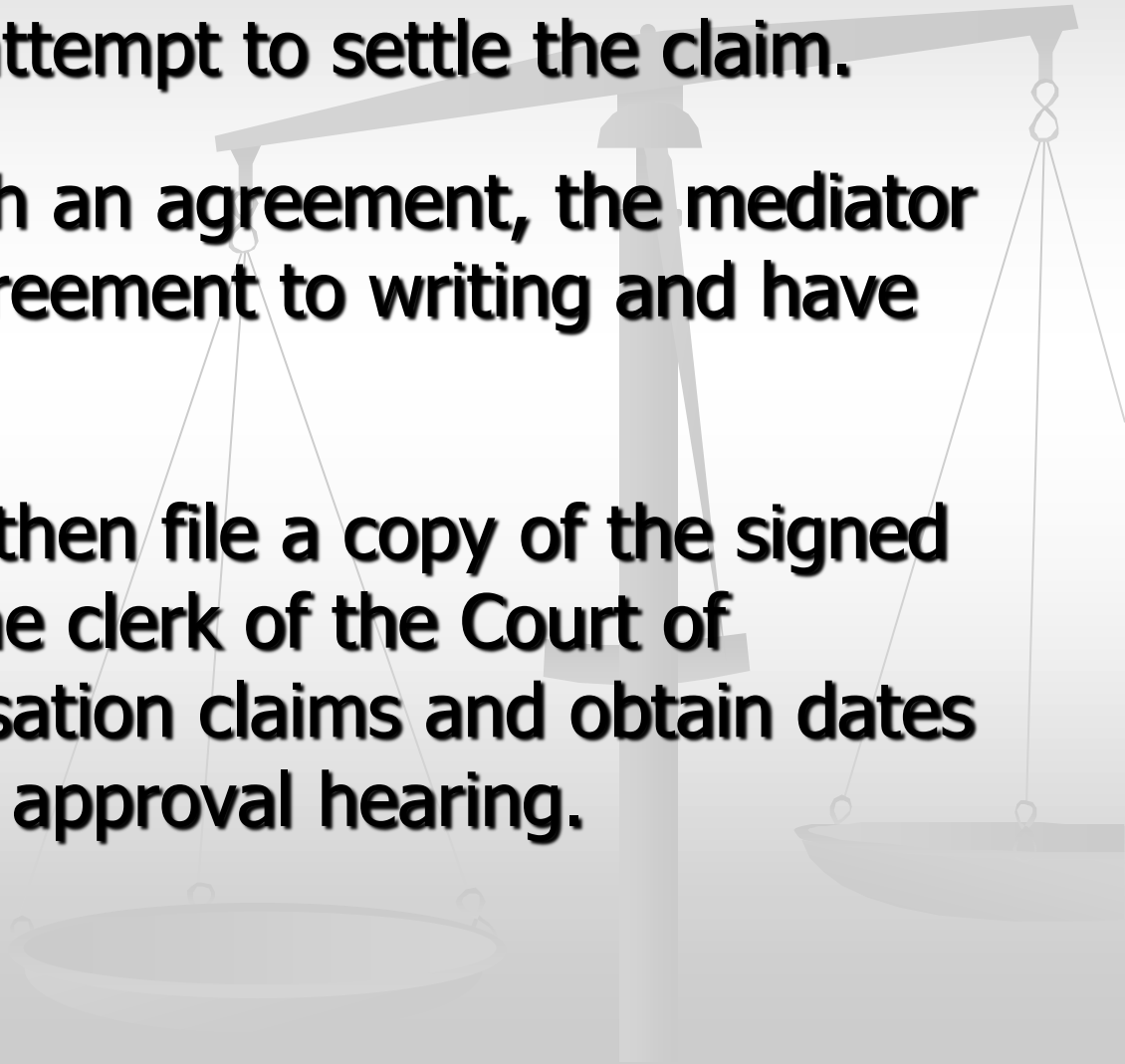
- A copy of the PBD shall be served upon the opposing party in a manner provided by the rules of civil procedure unless an alternative rule is adopted by the Administrator.
  - After the PBD is filed, the opposing party may request ADR if ADR was not requested by the filing party.
  - If the non-filing party requests ADR, a copy of the request shall be served on the opposing party.
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# Mediation Proceedings

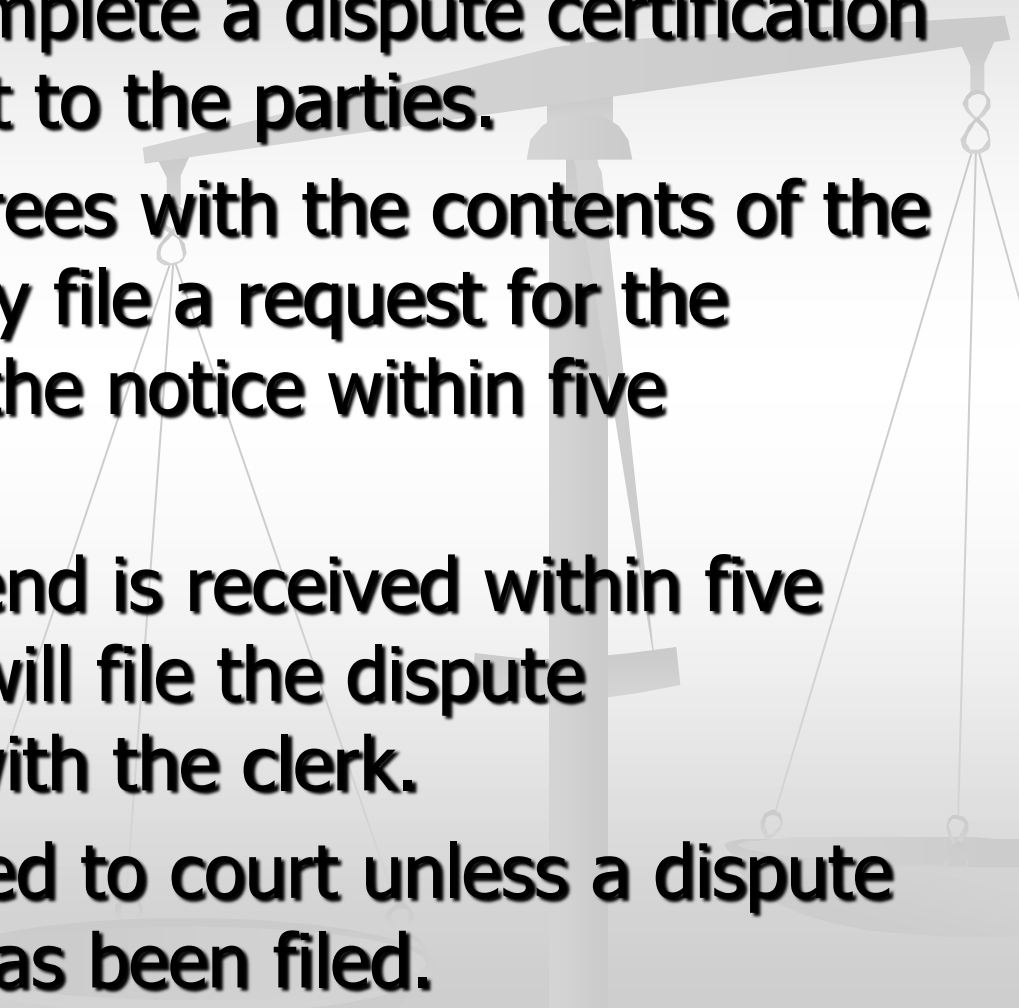
- Upon receipt of a request for ADR, the Office of Mediation Services shall promptly contact the parties to schedule the ADR proceeding.
  - The parties shall be required to exchange all medical records in their possession prior to the ADR proceeding.
  - Any party that fails to faithfully provide copies of medical records may be referred to the workers' compensation court for assessment of a civil penalty.
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# Mediation Proceedings

- The parties shall then attend the scheduled ADR proceedings and attempt to settle the claim.
- If the parties reach an agreement, the mediator will reduce the agreement to writing and have the parties sign.
- The mediator will then file a copy of the signed agreement with the clerk of the Court of Workers' Compensation claims and obtain dates for the settlement approval hearing.

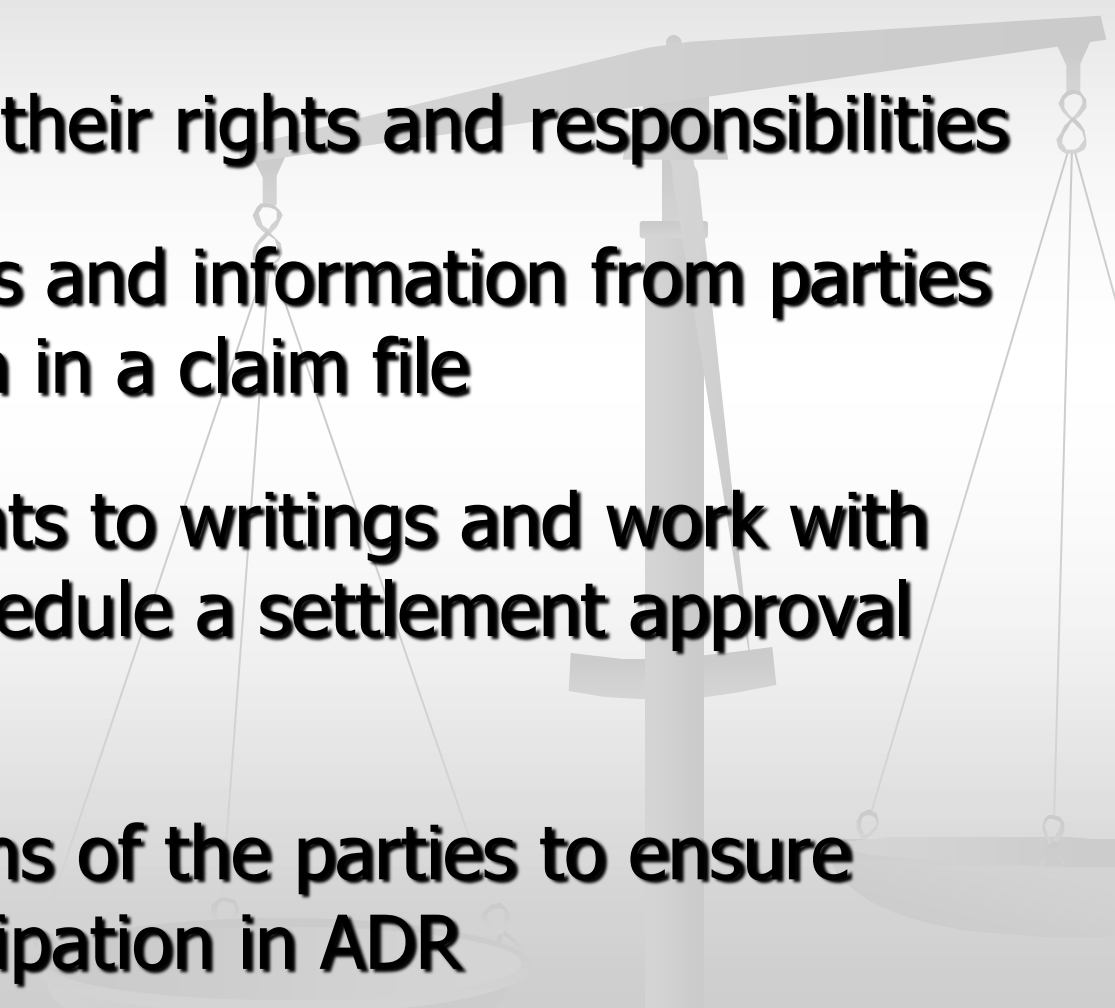


# Mediation Proceedings

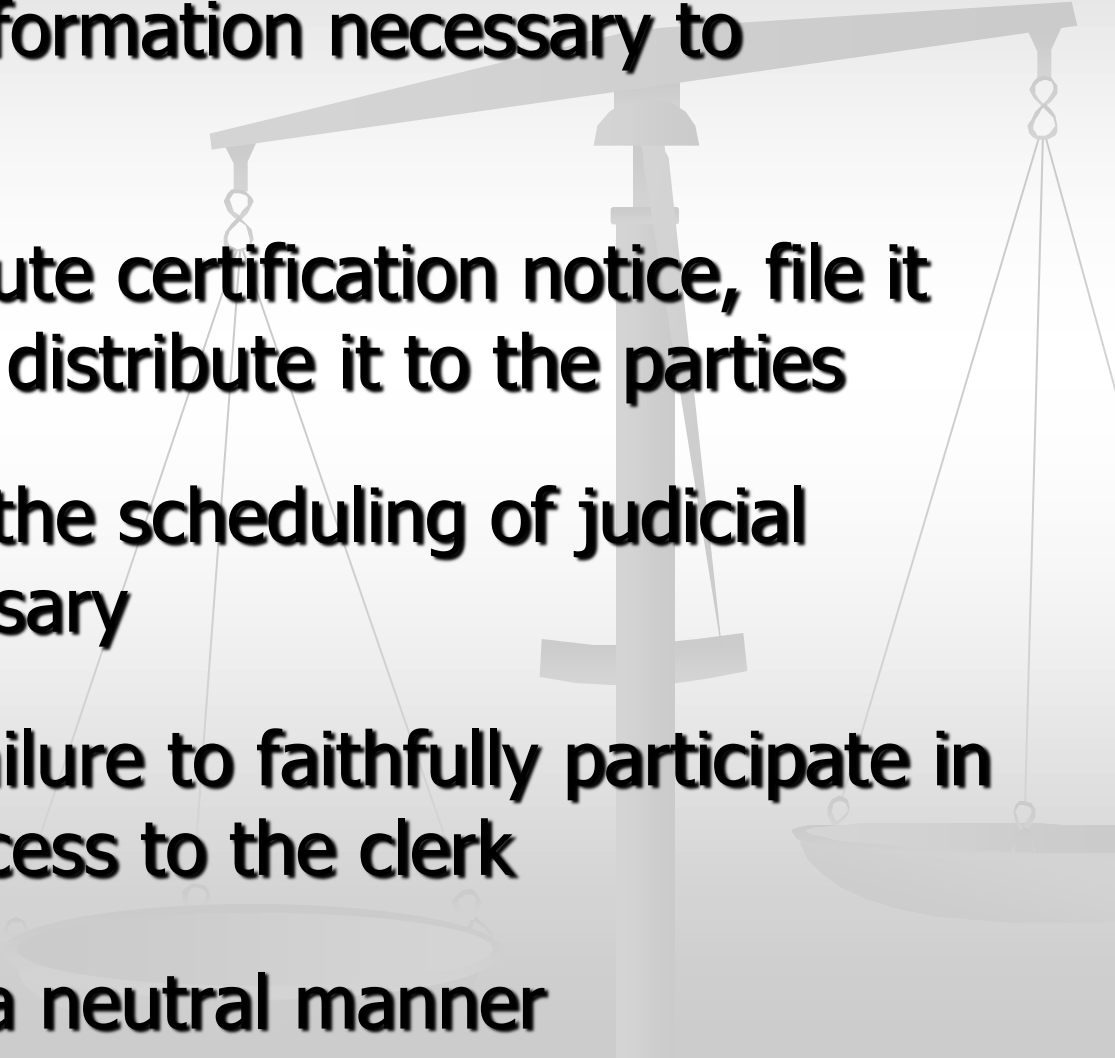
- If the parties are unable to reach a settlement, the mediator will complete a dispute certification notice and forward it to the parties.
  - If either party disagrees with the contents of the notice, the party may file a request for the mediator to amend the notice within five business days.
  - If no request to amend is received within five days, the mediator will file the dispute certification notice with the clerk.
  - No party may proceed to court unless a dispute certification notice has been filed.
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# Duties of the Mediator

- Provide ADR
  - Inform parties of their rights and responsibilities
  - Accept documents and information from parties and compile them in a claim file
  - Reduce settlements to writings and work with the parties to schedule a settlement approval hearing
  - Monitor the actions of the parties to ensure meaningful participation in ADR
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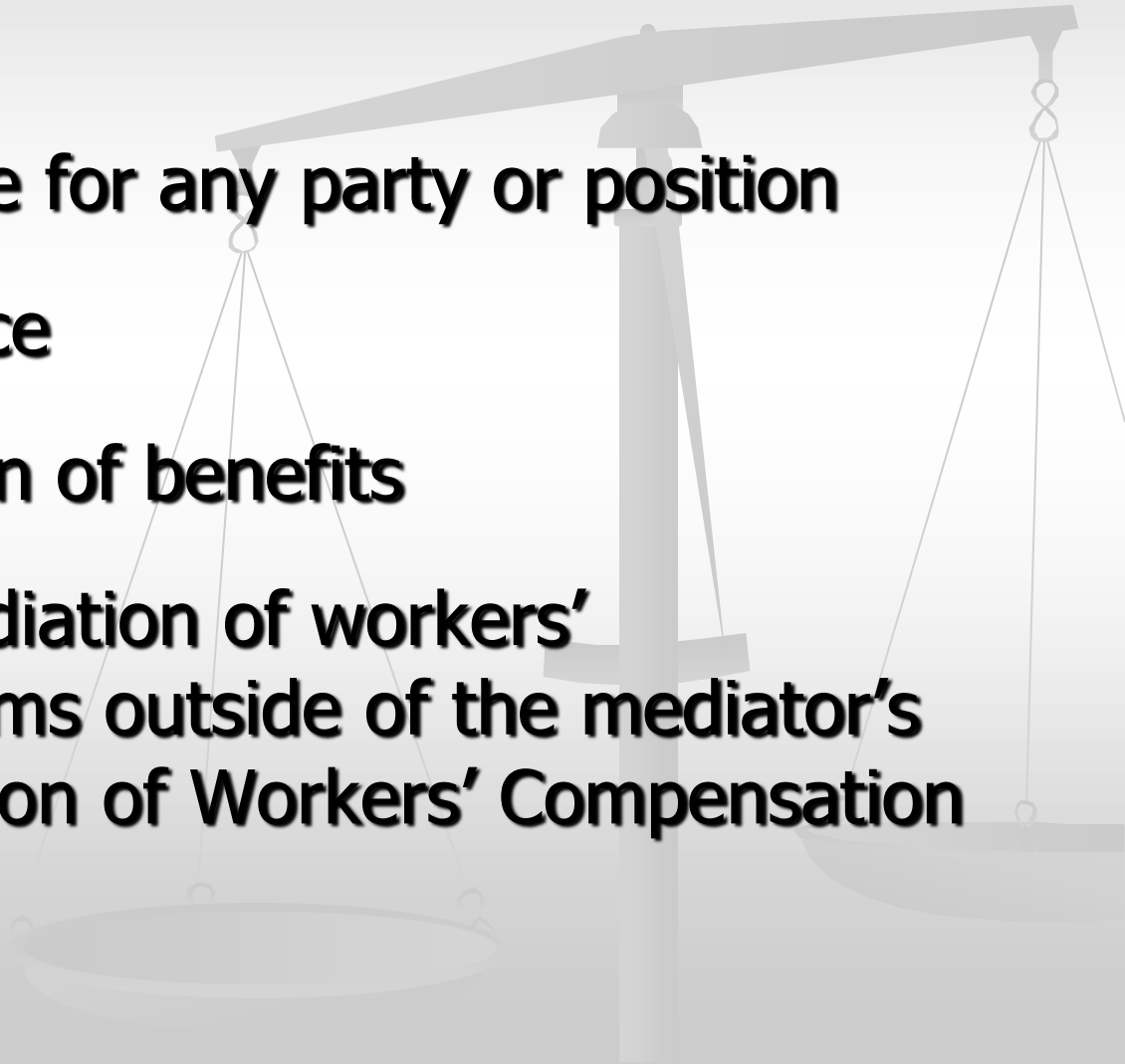
# Duties of Mediator

- Communicate with parties to resolve issues over the provision of information necessary to mediate a claim
  - Complete the dispute certification notice, file it with the clerk and distribute it to the parties
  - Confirm dates for the scheduling of judicial hearings—if necessary
  - Report a party's failure to faithfully participate in the mediation process to the clerk
  - Mediate issues in a neutral manner
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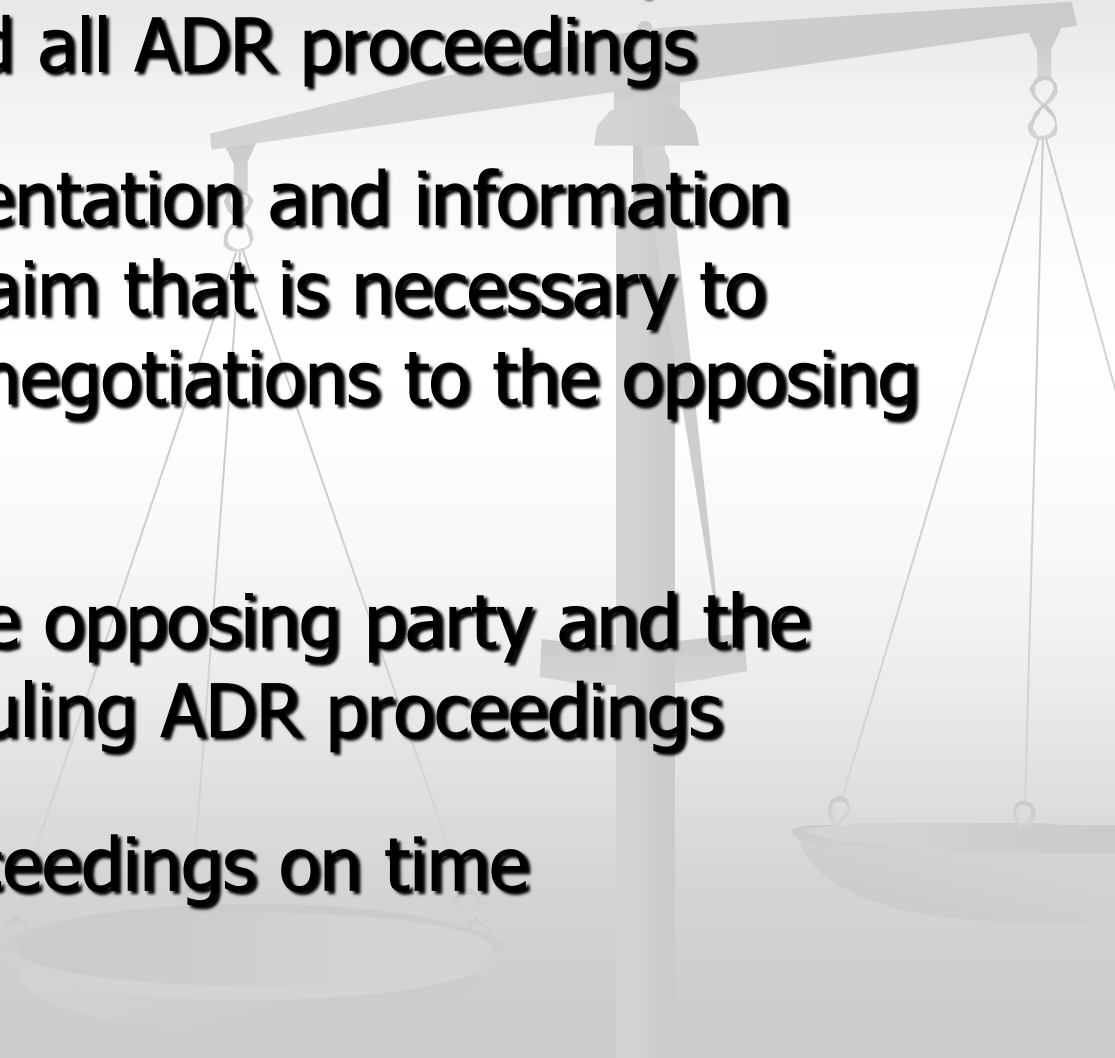
# Limitations of the Mediator

A mediator cannot:

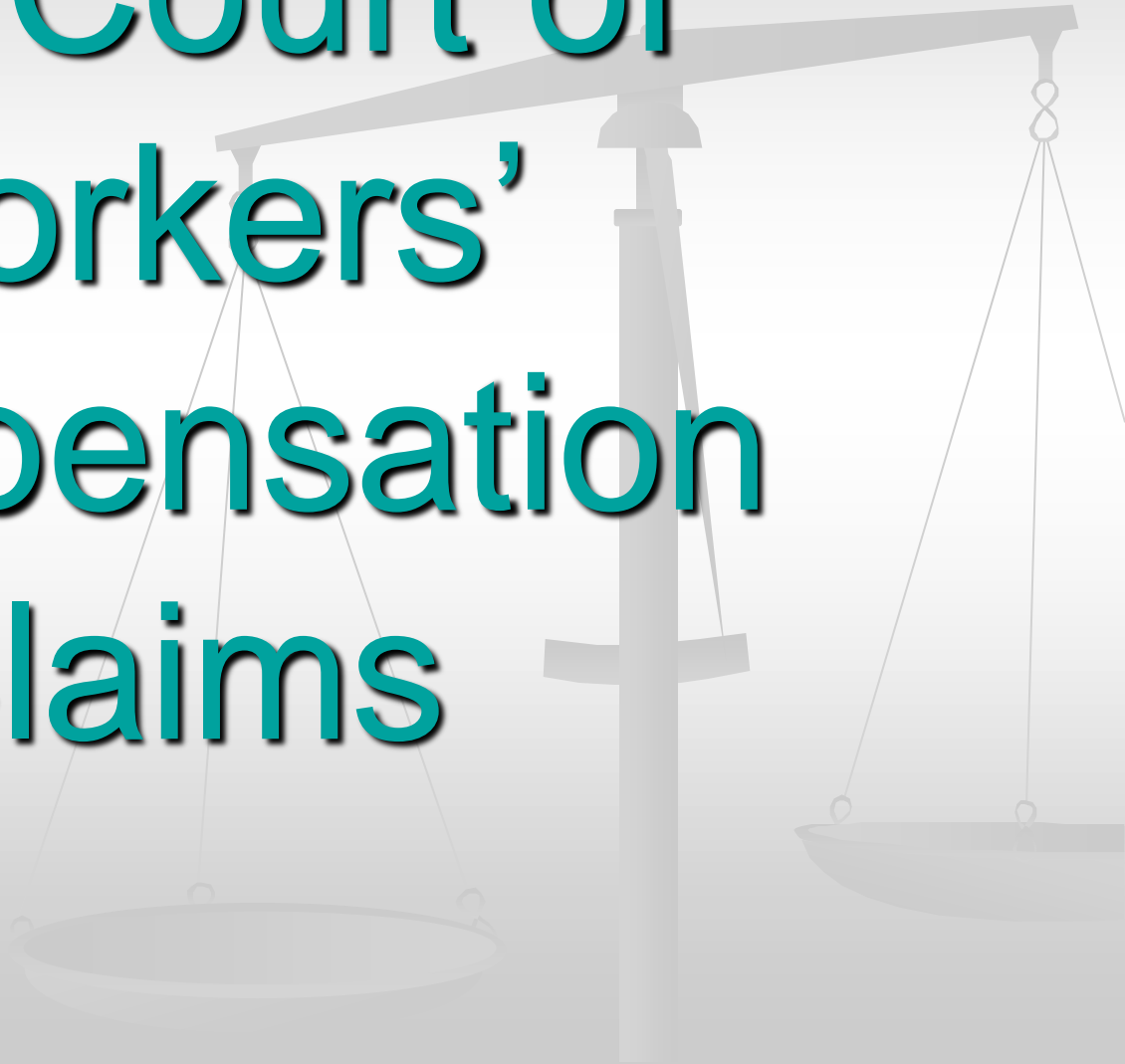
- Act as an advocate for any party or position
- Provide legal advice
- Order the provision of benefits
- Engage in the mediation of workers' compensation claims outside of the mediator's work for the Division of Workers' Compensation



# Duties of the Parties to ADR

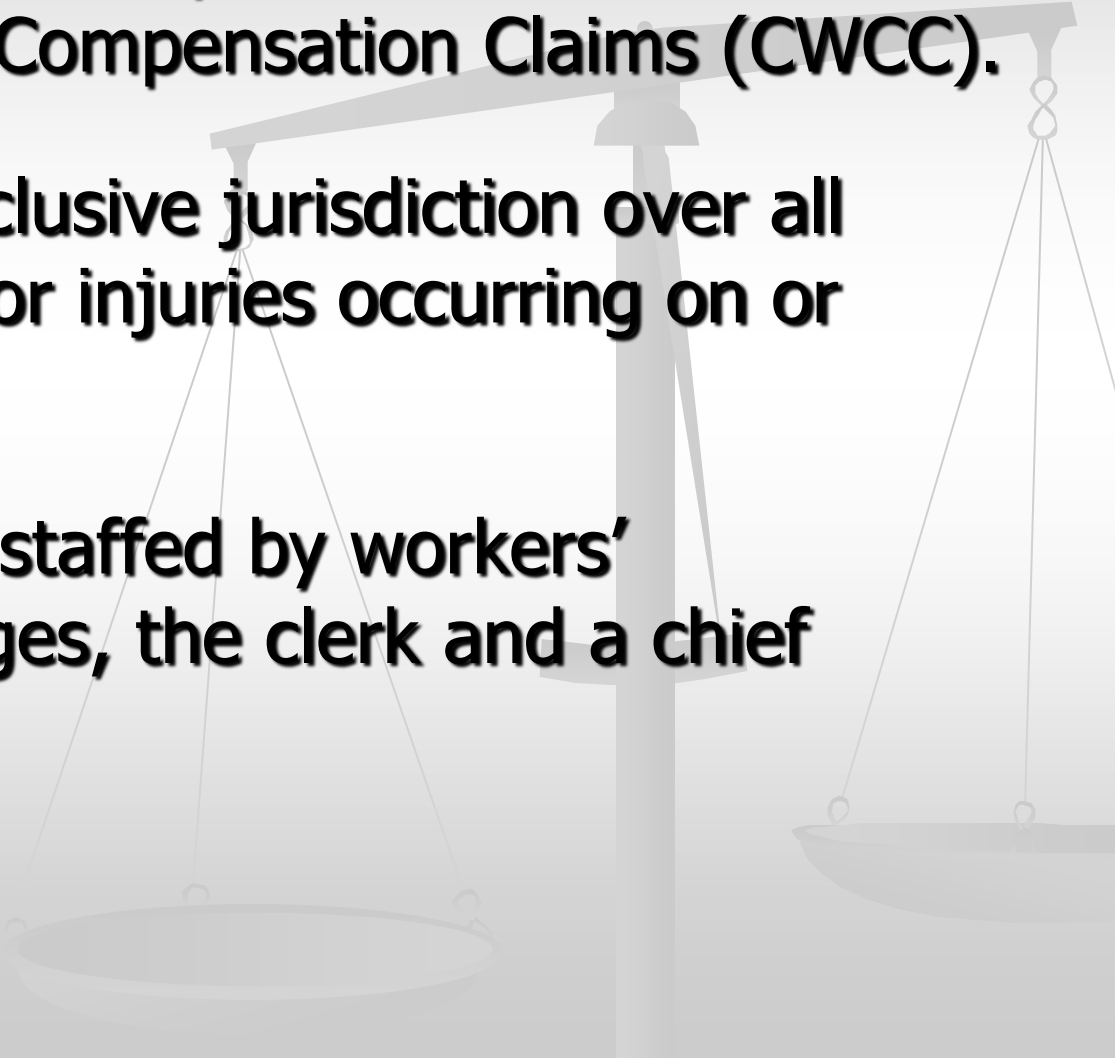
- Provide a representative with authority to settle the claim to attend all ADR proceedings
  - Provide all documentation and information pertinent to the claim that is necessary to engage in fruitful negotiations to the opposing party
  - Cooperate with the opposing party and the mediator in scheduling ADR proceedings
  - Arrive at ADR proceedings on time
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# The Court of Workers' Compensation Claims





# Creation of the Court

- Section 78 of Public Chapter 289 created the Court of Workers' Compensation Claims (CWCC).
  - The CWCC has exclusive jurisdiction over all contested claims for injuries occurring on or after July 1, 2014.
  - The CWCC will be staffed by workers' compensation judges, the clerk and a chief judge.
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# Appointment of Judges and the Chief Judge

- Judges and the chief judge will be appointed by the Administrator following an interview process—the Administrator must consider the comment of stakeholder groups.
- Judges will serve six-year terms.
- Judges are limited to serving three terms.
- The chief judge is limited to two terms.
- Judges may be removed by the Administrator for commission of any judicial offense provided in TCA § 17-5-302.

# Qualifications of WC Judges

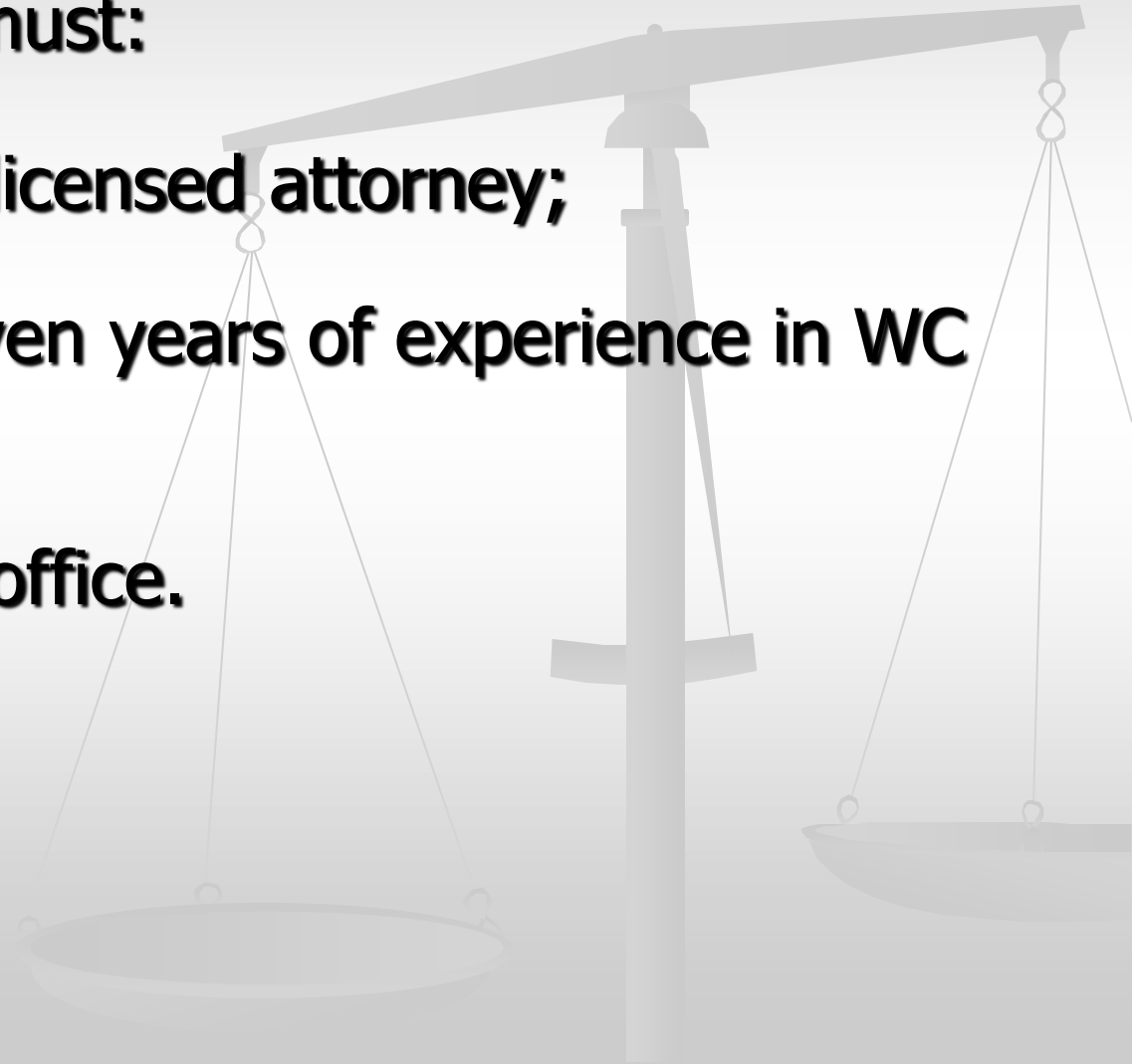
- **WC judges must:**

1. **Be at least 30 years of age;**
2. **Be a Tennessee licensed attorney;**
3. **Have at least five years experience in WC law;**  
**and**
4. **Take an oath of office.**



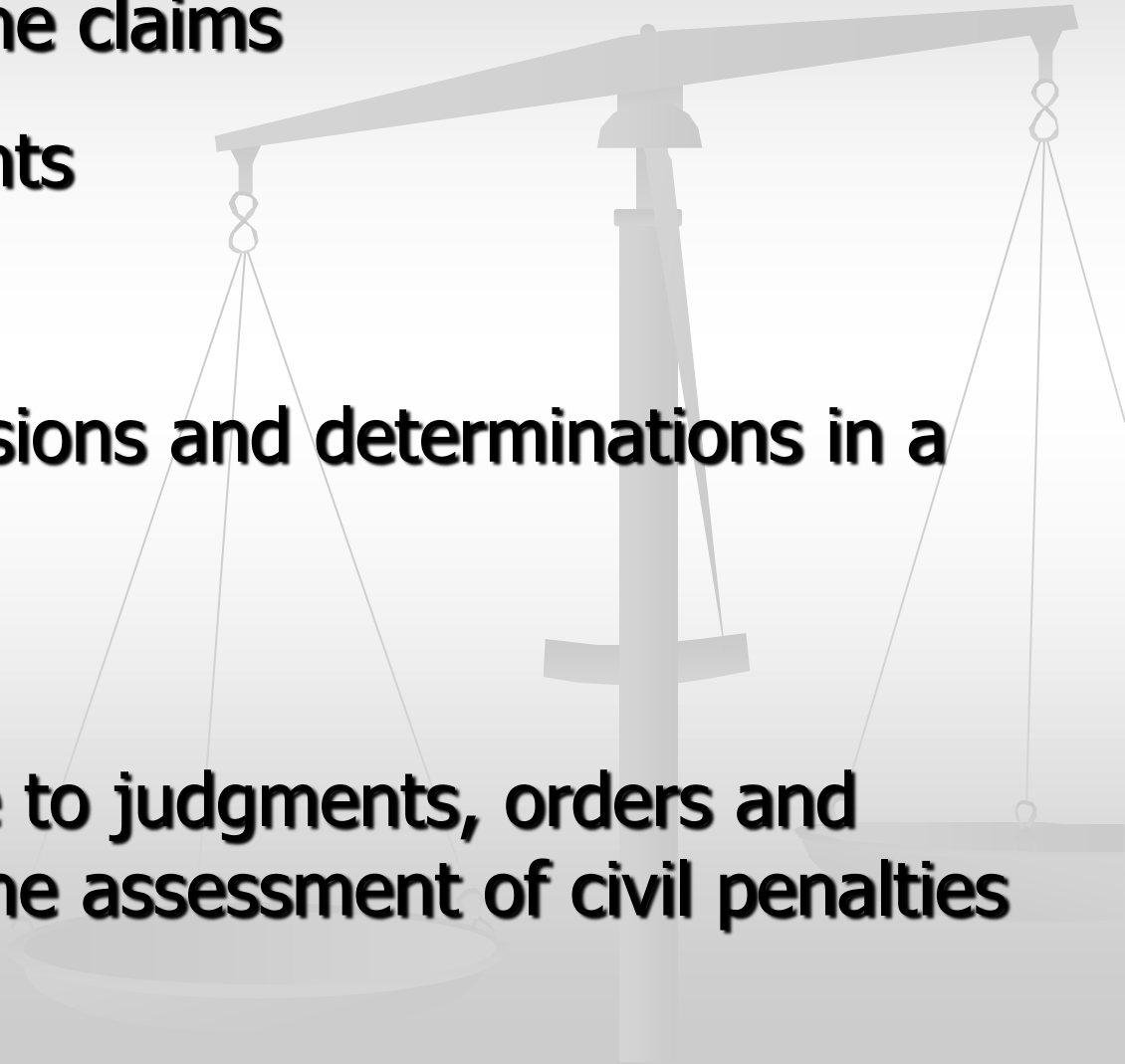
# Qualifications of the Chief Judge

- The Chief Judge must:
  1. Be a Tennessee licensed attorney;
  2. Have at least seven years of experience in WC law; and
  3. Take an oath of office.



# Duties of a Workers' Compensation Judge

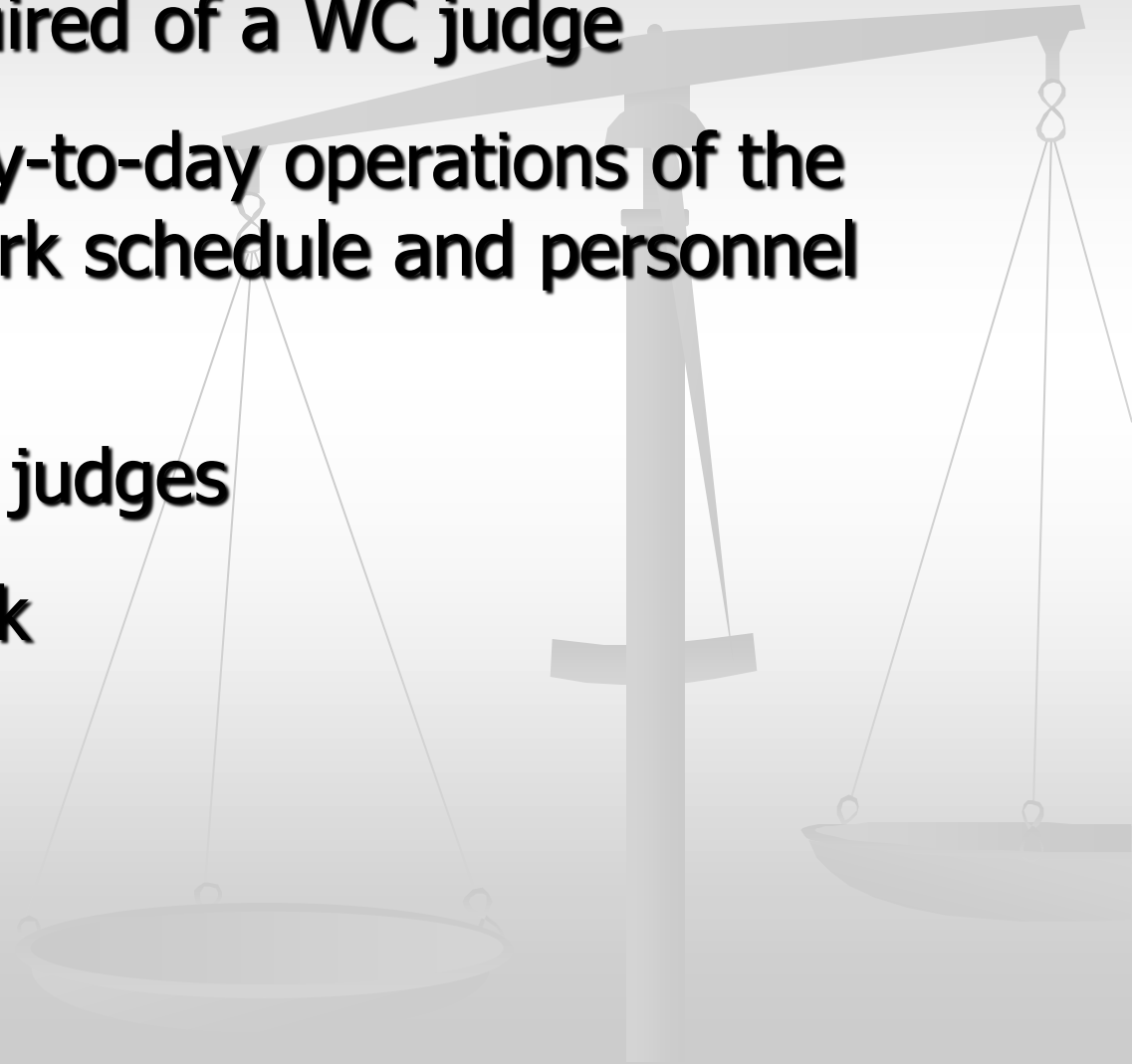
- Hear and determine claims
- Approve settlements
- Conduct hearings
- Make orders, decisions and determinations in a timely manner
- Issue subpoenas
- Compel obedience to judgments, orders and process through the assessment of civil penalties



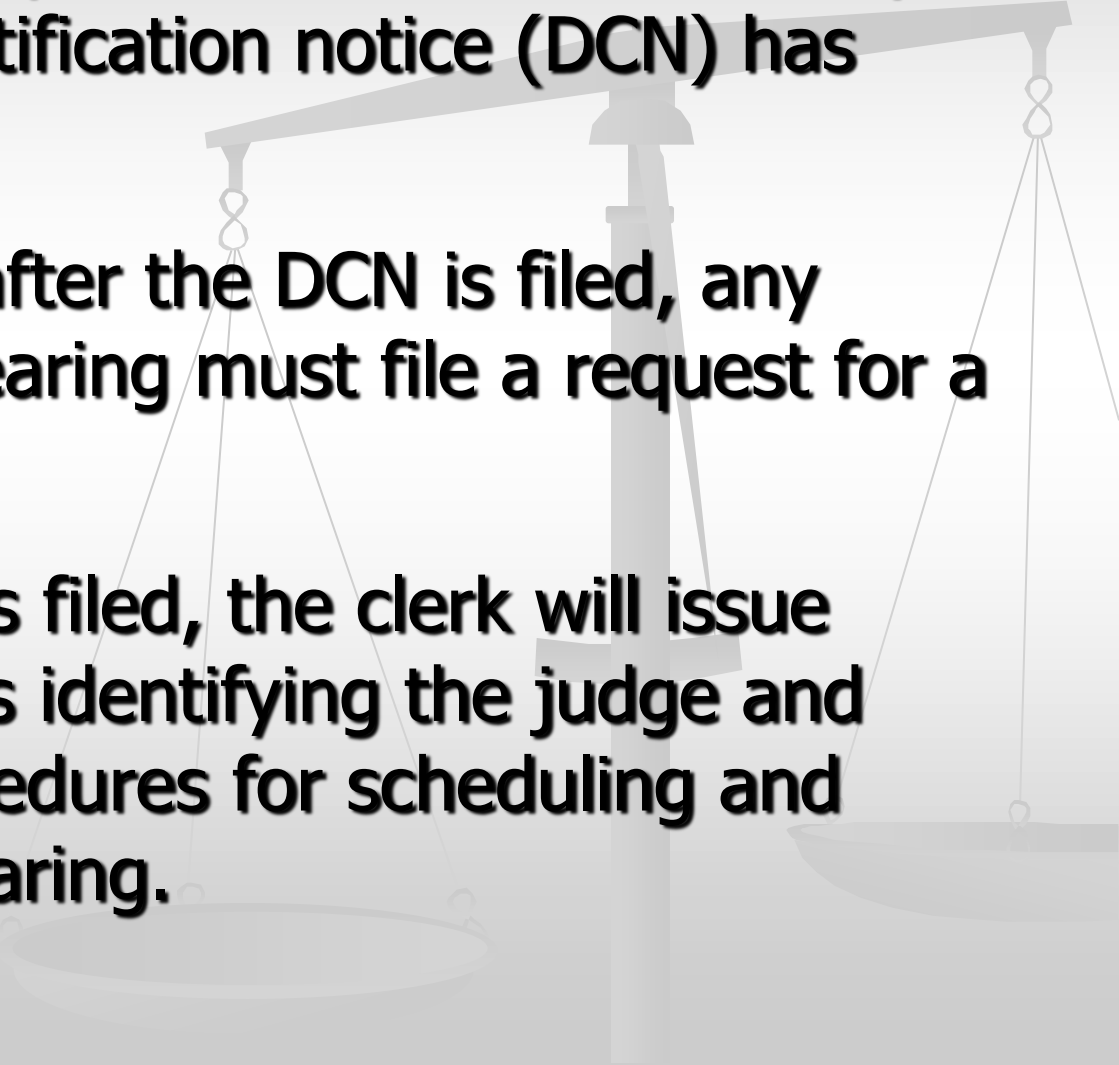


# Duties of the Chief Judge

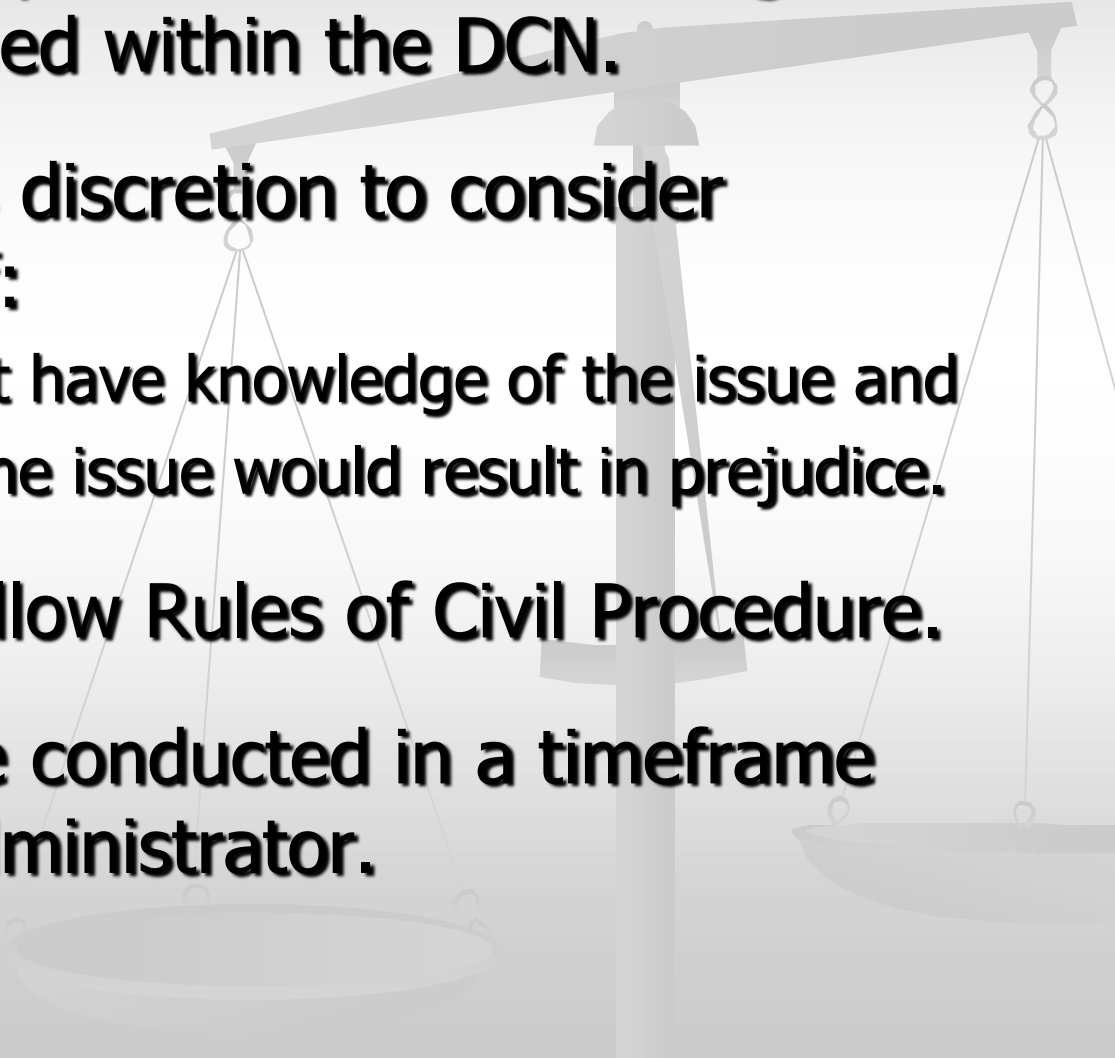
- All the duties required of a WC judge
- Administer the day-to-day operations of the CWCC such as work schedule and personnel issues
- Supervise the WC judges
- Supervise the clerk



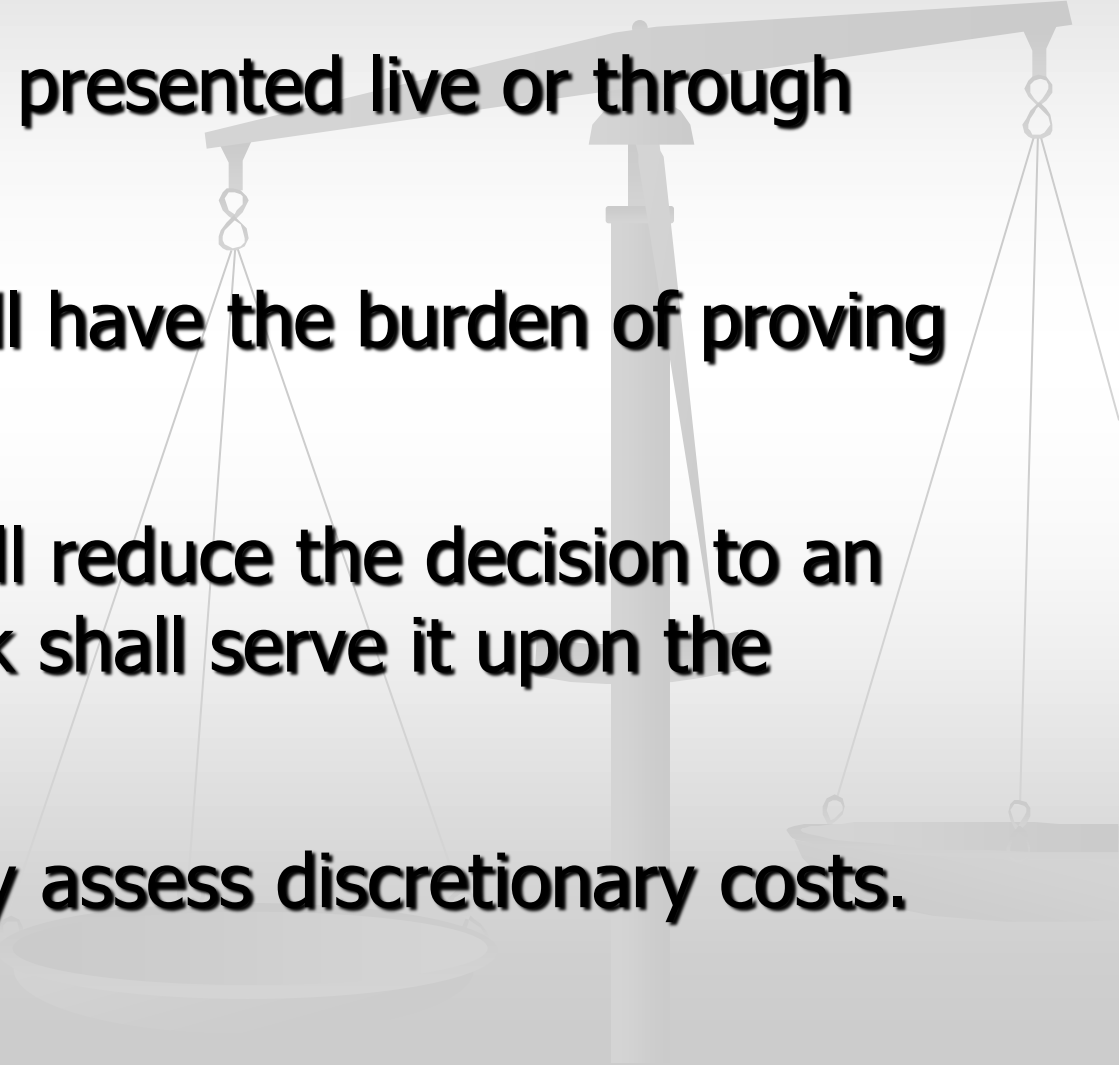
# CWCC Procedures

- The parties may appear before the CWCC only after a dispute certification notice (DCN) has been issued.
  - Within sixty days after the DCN is filed, any party desiring a hearing must file a request for a hearing.
  - After the request is filed, the clerk will issue notice to all parties identifying the judge and providing the procedures for scheduling and preparing for a hearing.
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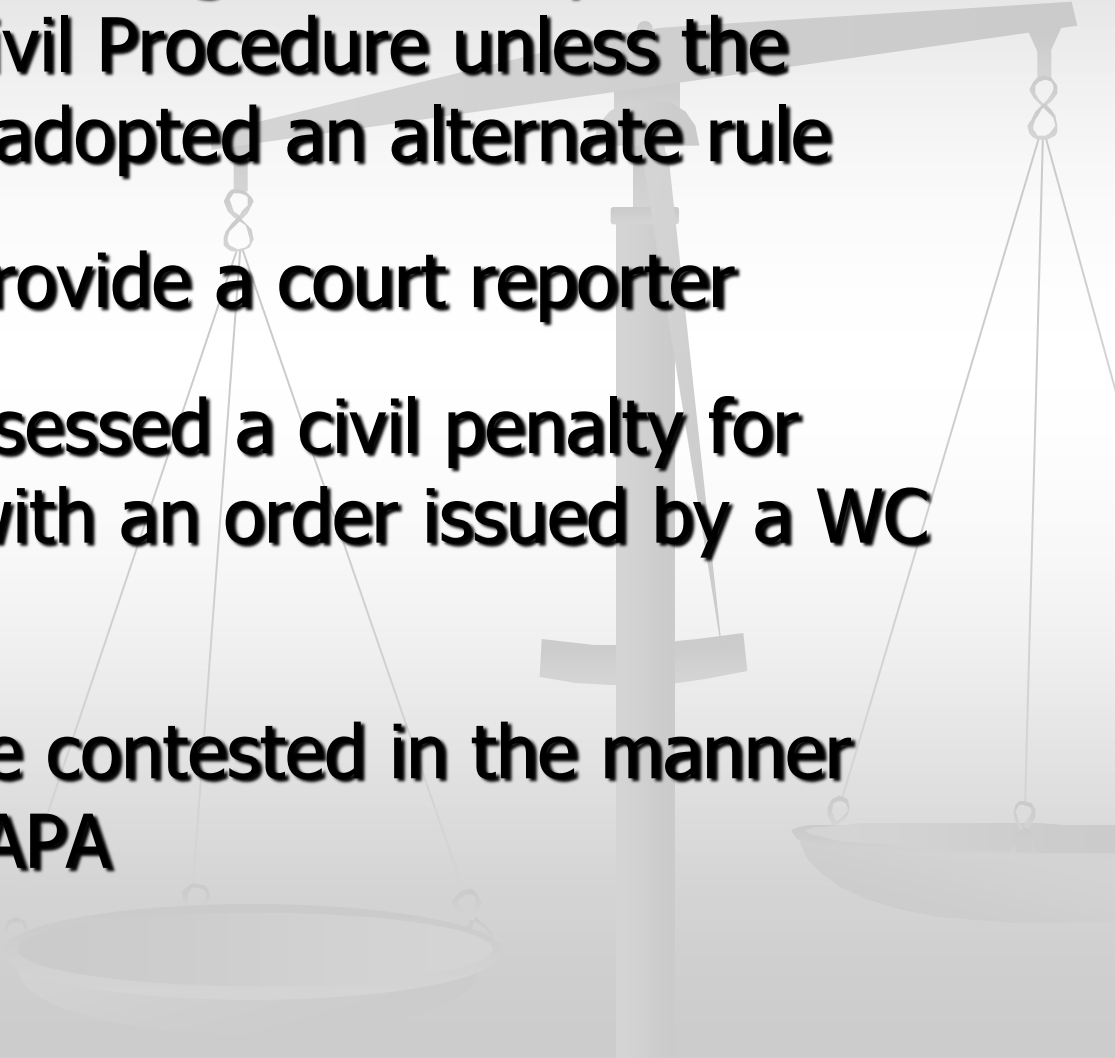
# CWCC Procedures

- No matter may be presented for a hearing unless it is contained within the DCN.
  - The WC judge has discretion to consider additional issues if:
    - The parties did not have knowledge of the issue and
    - Refusing to hear the issue would result in prejudice.
  - All hearings will follow Rules of Civil Procedure.
  - All hearings will be conducted in a timeframe adopted by the Administrator.
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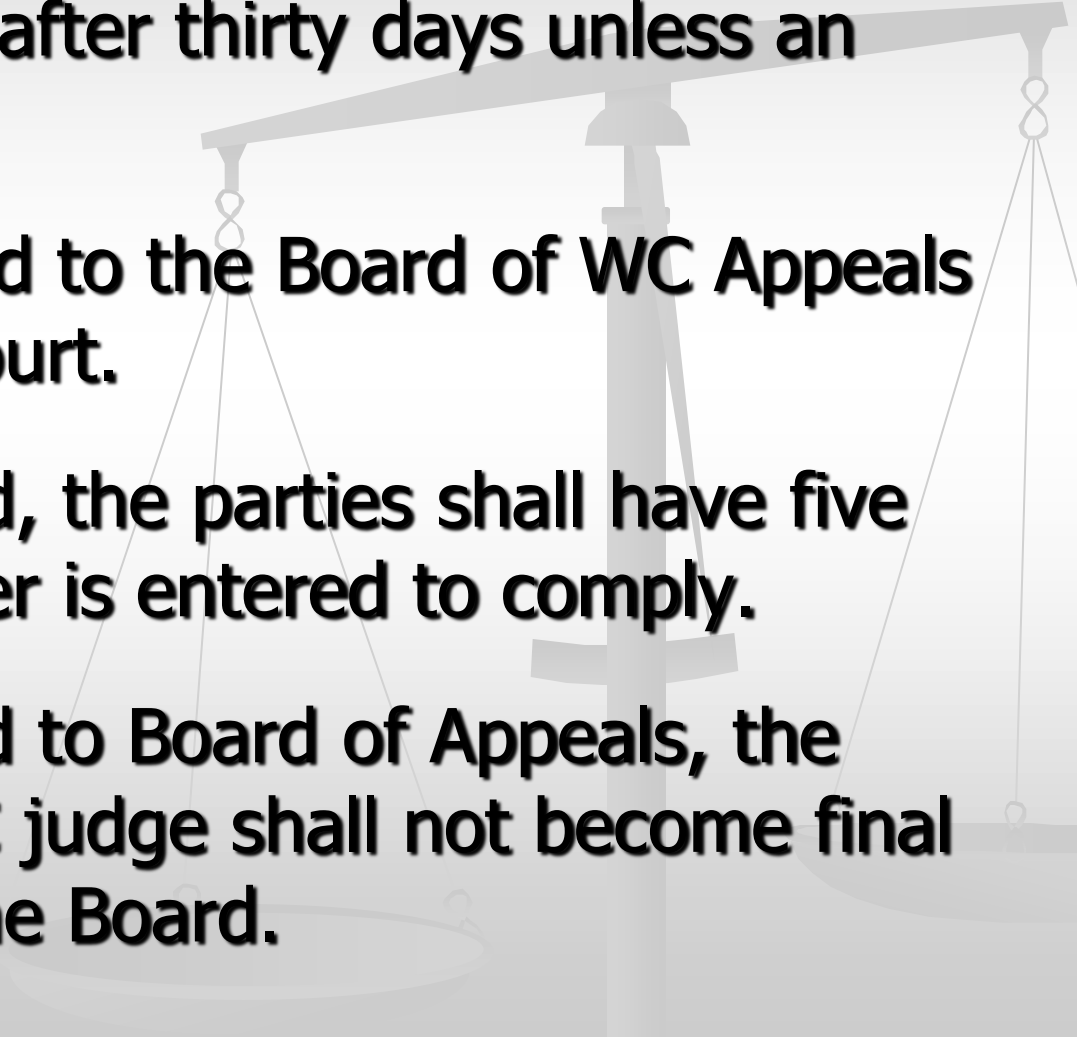
# CWCC Proceedings

- Hearings shall be open to the public.
  - Testimony may be presented live or through deposition.
  - The employee shall have the burden of proving all issues.
  - The WC judge shall reduce the decision to an order and the clerk shall serve it upon the parties.
  - The WC judge may assess discretionary costs.
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# CWCC Proceedings

- All proceedings shall be governed by the Rules of Evidence and Civil Procedure unless the Administrator has adopted an alternate rule
  - The parties may provide a court reporter
  - A party may be assessed a civil penalty for failing to comply with an order issued by a WC judge
  - The penalty can be contested in the manner provided by the UAPA
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# CWCC Proceedings

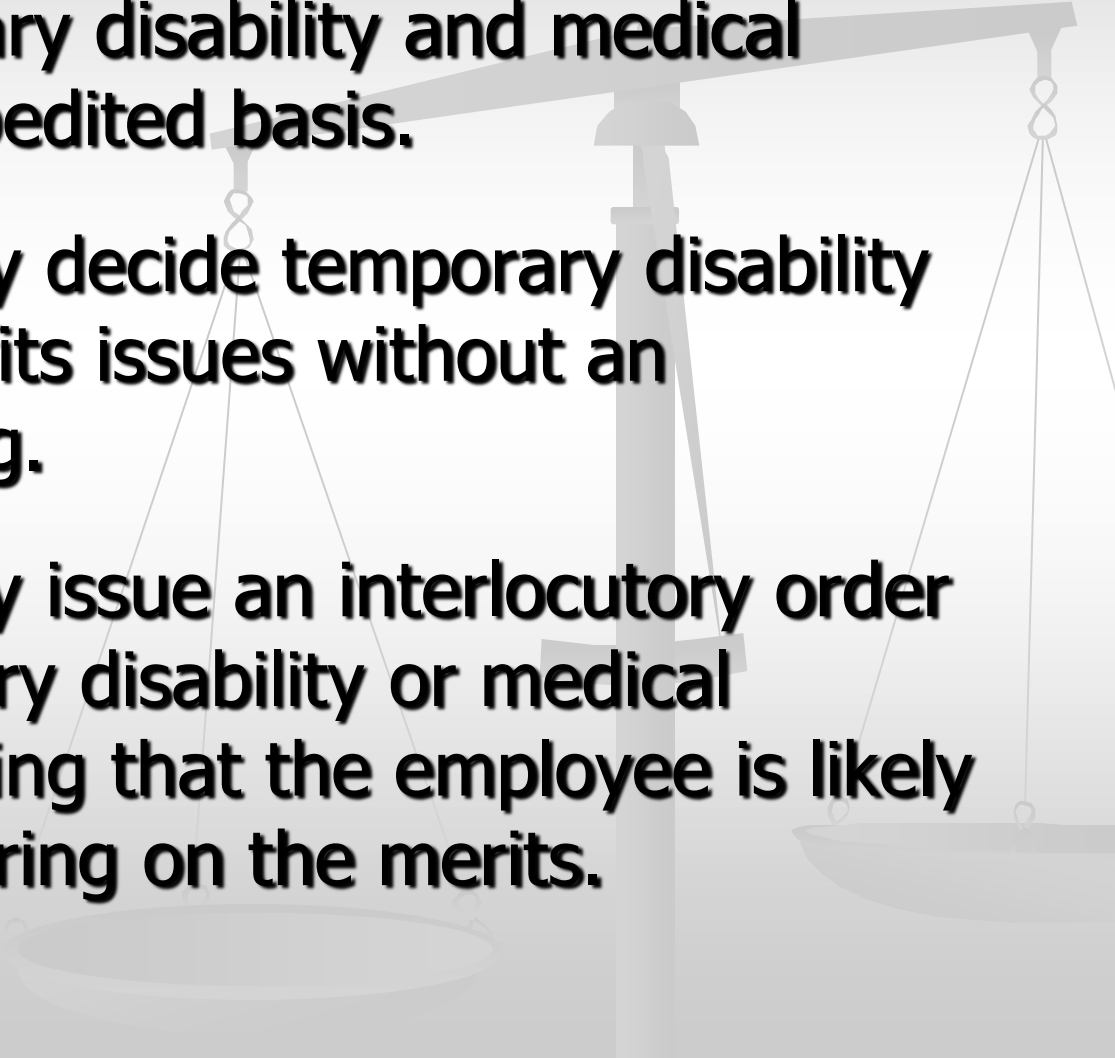
- Any compensation order issued by a WC judge shall become final after thirty days unless an appeals is filed.
  - Appeal may be filed to the Board of WC Appeals or the Supreme Court.
  - If no appeal is filed, the parties shall have five days after the order is entered to comply.
  - If an appeal is filed to Board of Appeals, the decision of the WC judge shall not become final until certified by the Board.
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# CWCC Proceedings

- **Filing an appeal to the Board of WC Appeals will toll the time for filing an appeal to the Supreme Court.**
- **No appeal may be filed with the Supreme Court until the order of the WC Judge has been certified by the Board as final or the order has become final by operation of law.**



# Expedited Hearings

- A WC judge may consider disputes of issues related to temporary disability and medical benefits on an expedited basis.
  - The WC judge may decide temporary disability and medical benefits issues without an evidentiary hearing.
  - The WC judge may issue an interlocutory order awarding temporary disability or medical benefits upon finding that the employee is likely to prevail at a hearing on the merits.
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# Expedited Hearings

- Compliance with an interlocutory order for temporary disability or medical benefits must occur within seven business days unless an appeal is filed with the Board of WC Claims.
- A party may apply to the WC judge for modification of an order for temporary disability benefits at any time unless an appeal before the Board of WC Claims is pending.

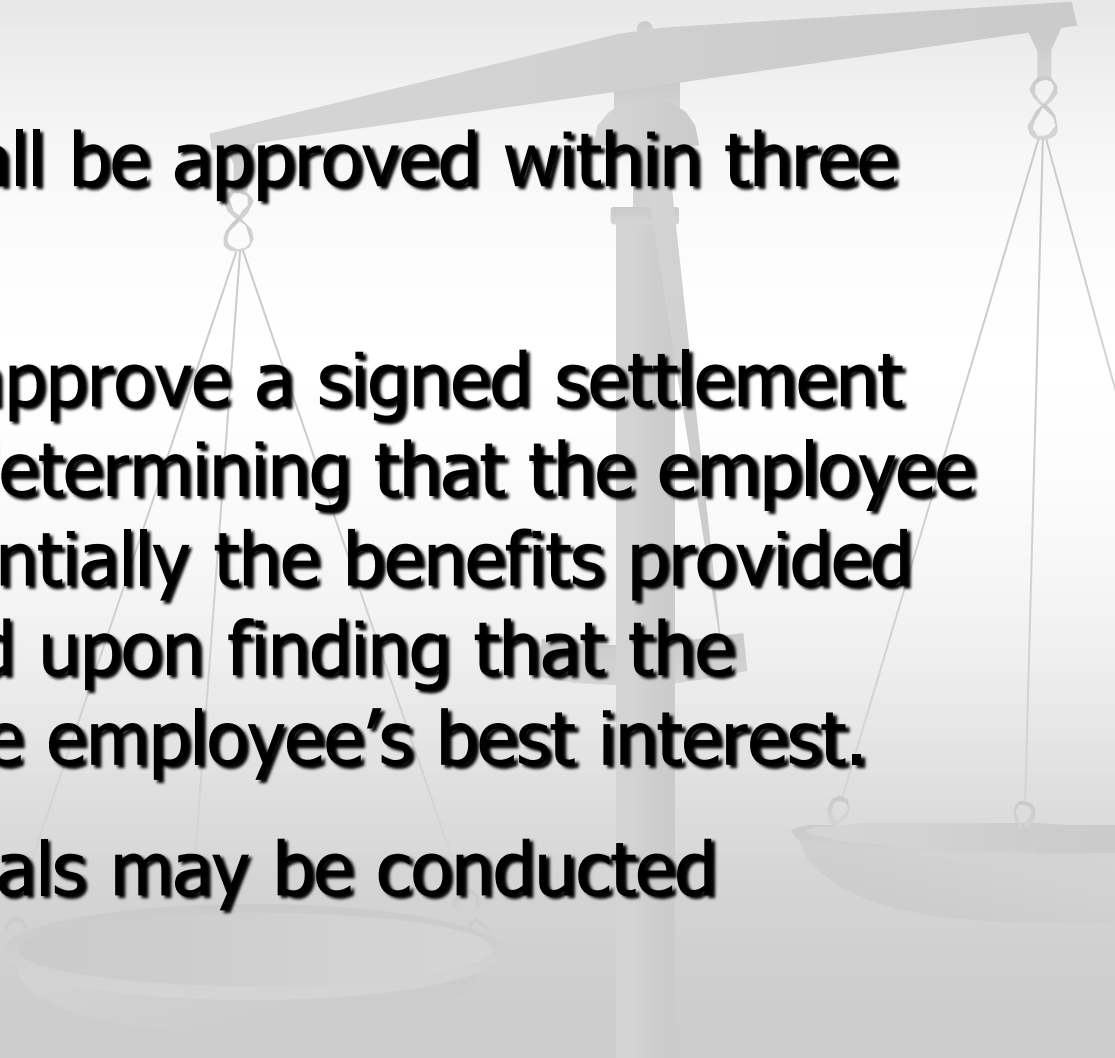
# Expedited Hearings

- If a motion for temporary disability or medical benefits is denied following an expedited hearing and an appeal of that order—if applicable—has been denied, the judge may entertain a motion from the employer to dismiss the claim.
- An interlocutory order for temporary disability or medical benefits cannot be appealed through the UAPA.

# Discovery

- Unless otherwise provided, discovery shall be conducted according to the Rules of Civil Procedure unless an alternate procedure has been adopted by the Administrator.
- All discovery related motions shall be adjudicated on the review of written motions and affidavits unless the WC judge determines that a hearing is necessary.

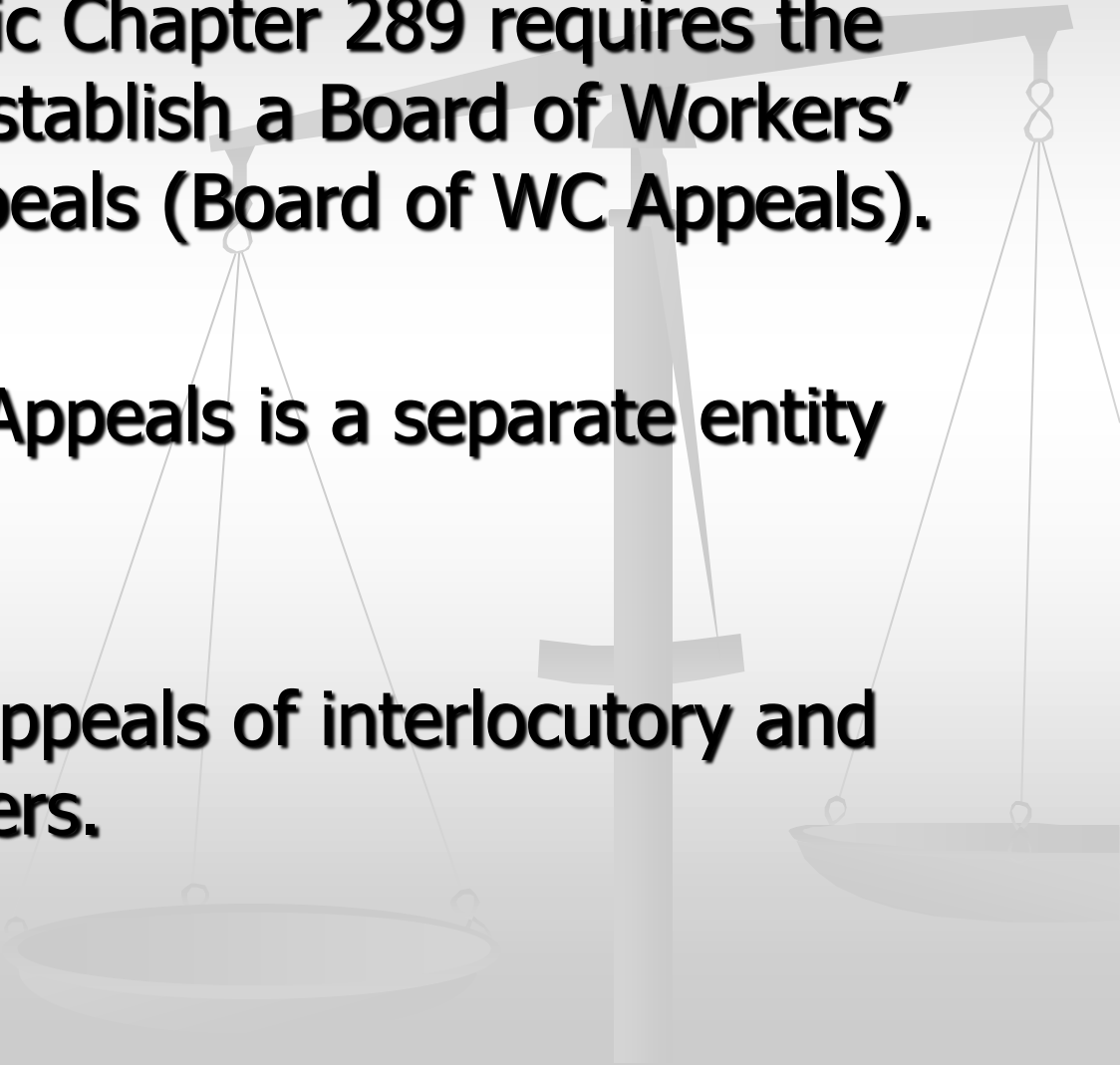
# Settlements

- No settlement shall be binding until approved by a WC judge.
  - All settlements shall be approved within three business days.
  - A WC judge may approve a signed settlement agreement upon determining that the employee is receiving substantially the benefits provided by the WC law and upon finding that the settlement is in the employee's best interest.
  - Settlement approvals may be conducted telephonically.
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# Board of Workers' Compensation Appeals


A faint, light gray background image of a balance scale is visible. The scale is positioned on the right side of the frame, with its vertical post and horizontal beam extending across the middle. Two pans are suspended from the beam by thin wires. The scale appears to be in a state of balance.

# Creation of the Board

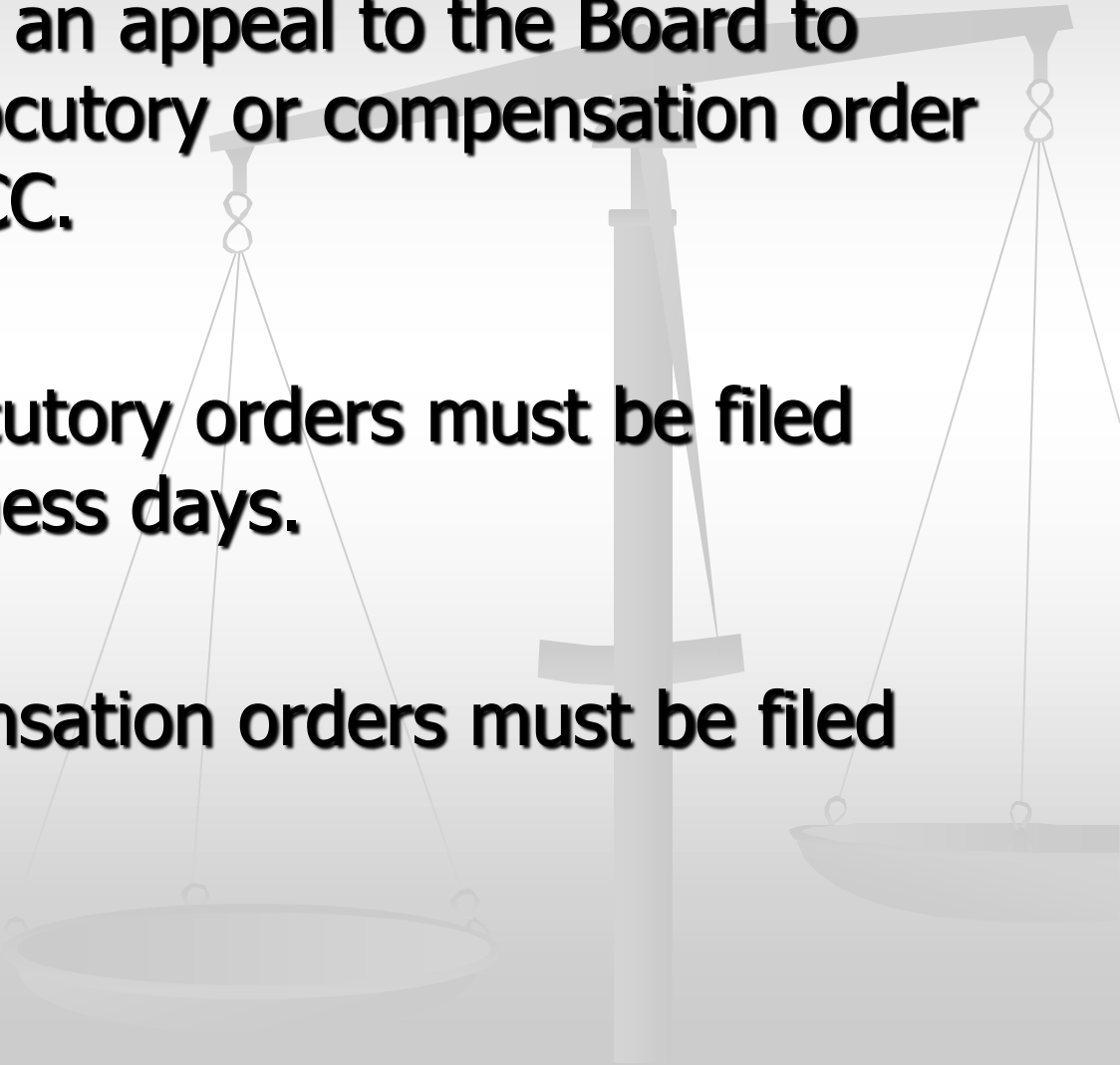
- Section 83 of Public Chapter 289 requires the Administrator to establish a Board of Workers' Compensation Appeals (Board of WC Appeals).
  - The Board of WC Appeals is a separate entity from the CWCC.
  - The Board hears appeals of interlocutory and compensation orders.
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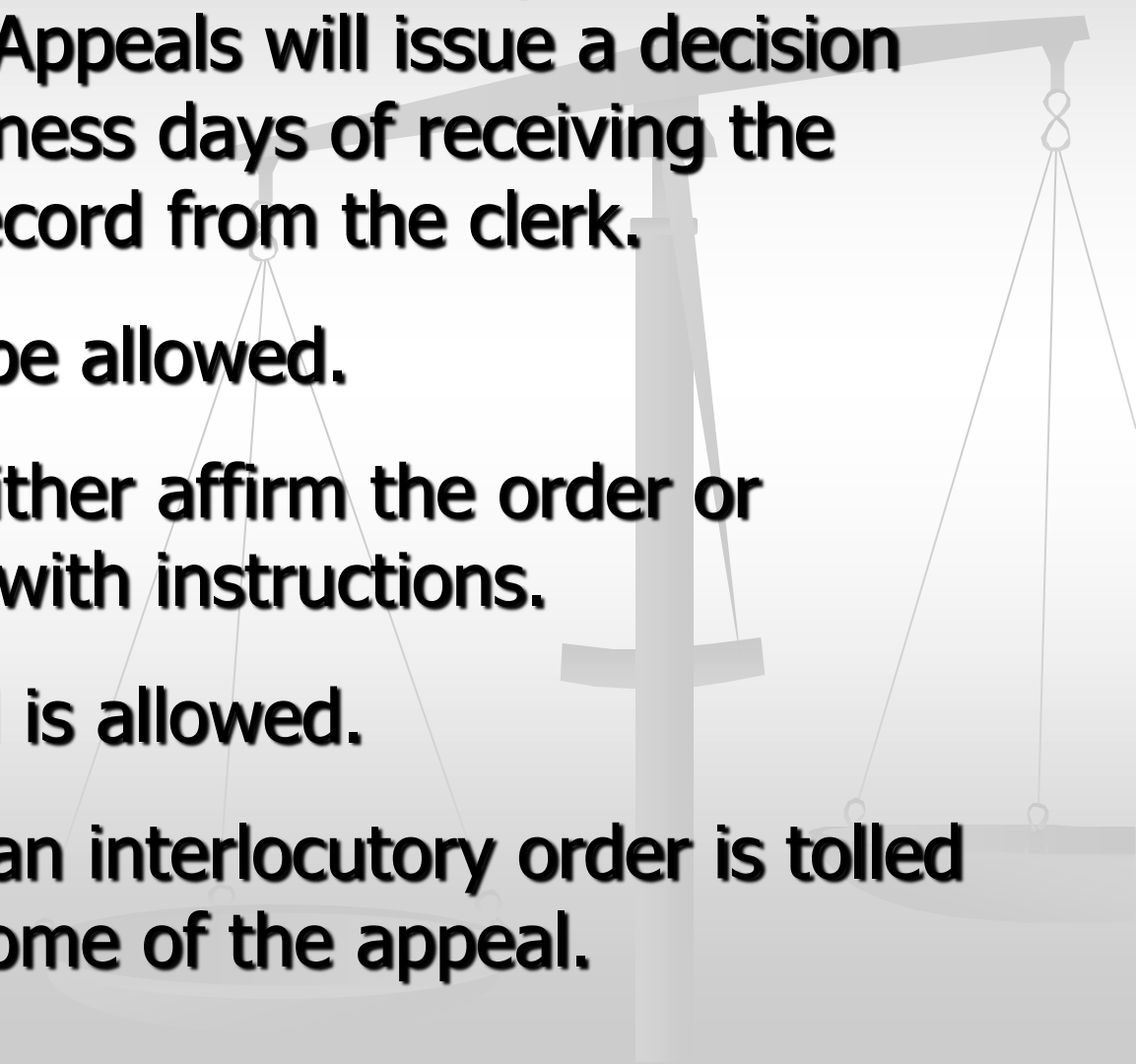
# Appointment of Judges to the WC Appeals Board

- The Governor shall appoint three judges to serve on the board.
  - The judges must:
    - Be at least 30 years of age
    - Have a Tennessee law license
    - Have at least seven years experience in WC matters
    - Take an oath of office
  - The judges shall serve six-year terms.
  - The judges are limited to serving two terms.
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# WC Appeals Board Procedure

- Any party may file an appeal to the Board to contest any interlocutory or compensation order issued by the CWCC.
  - Appeals of interlocutory orders must be filed within seven business days.
  - Appeals of compensation orders must be filed within thirty days.
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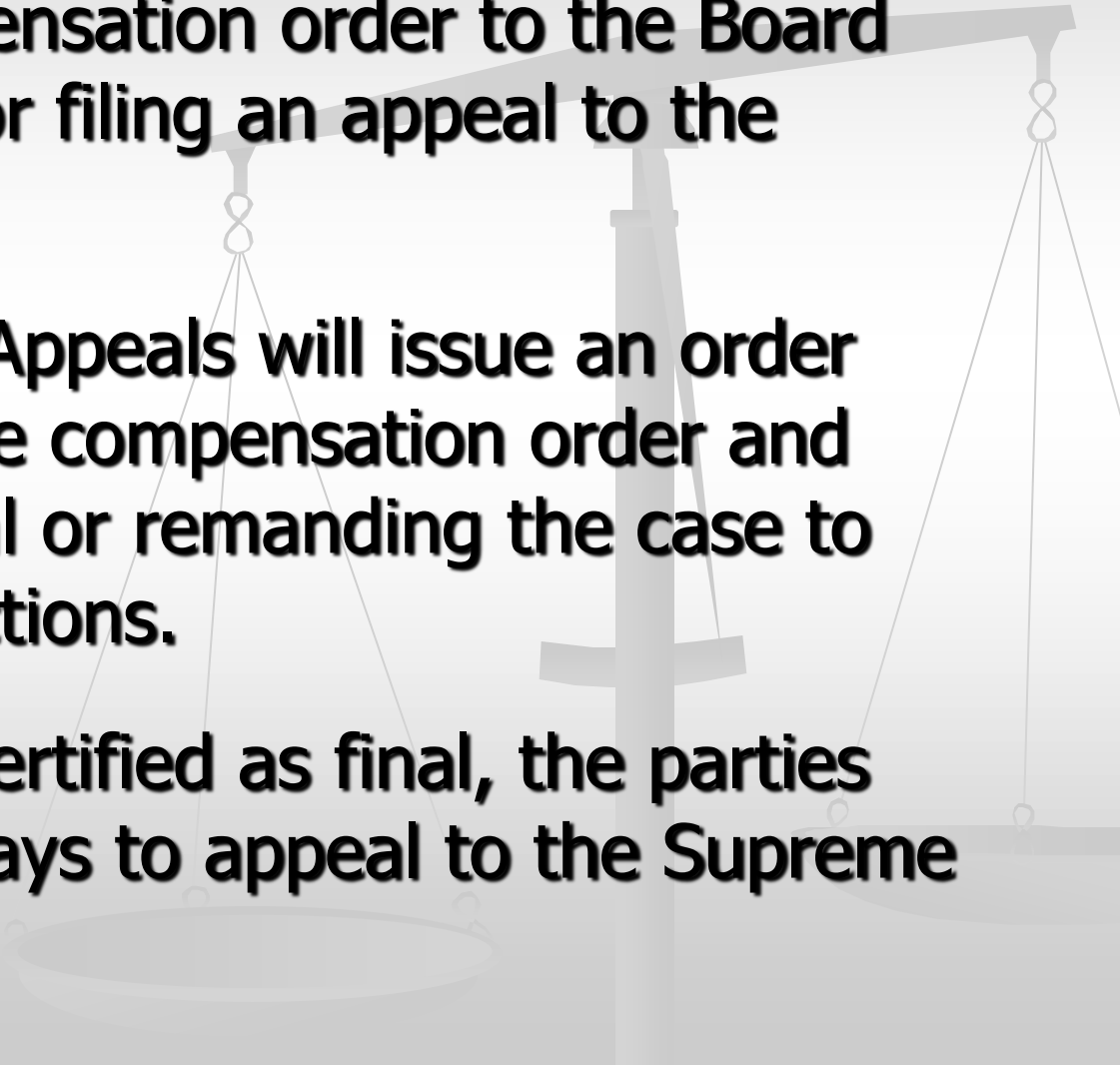
# Appeals of Interlocutory Orders

- After an appeal of an interlocutory order is filed, the Board of WC Appeals will issue a decision within seven business days of receiving the appeal and the record from the clerk.
  - No briefing shall be allowed.
  - The Board may either affirm the order or remand the case with instructions.
  - No further appeal is allowed.
  - Compliance with an interlocutory order is tolled pending the outcome of the appeal.
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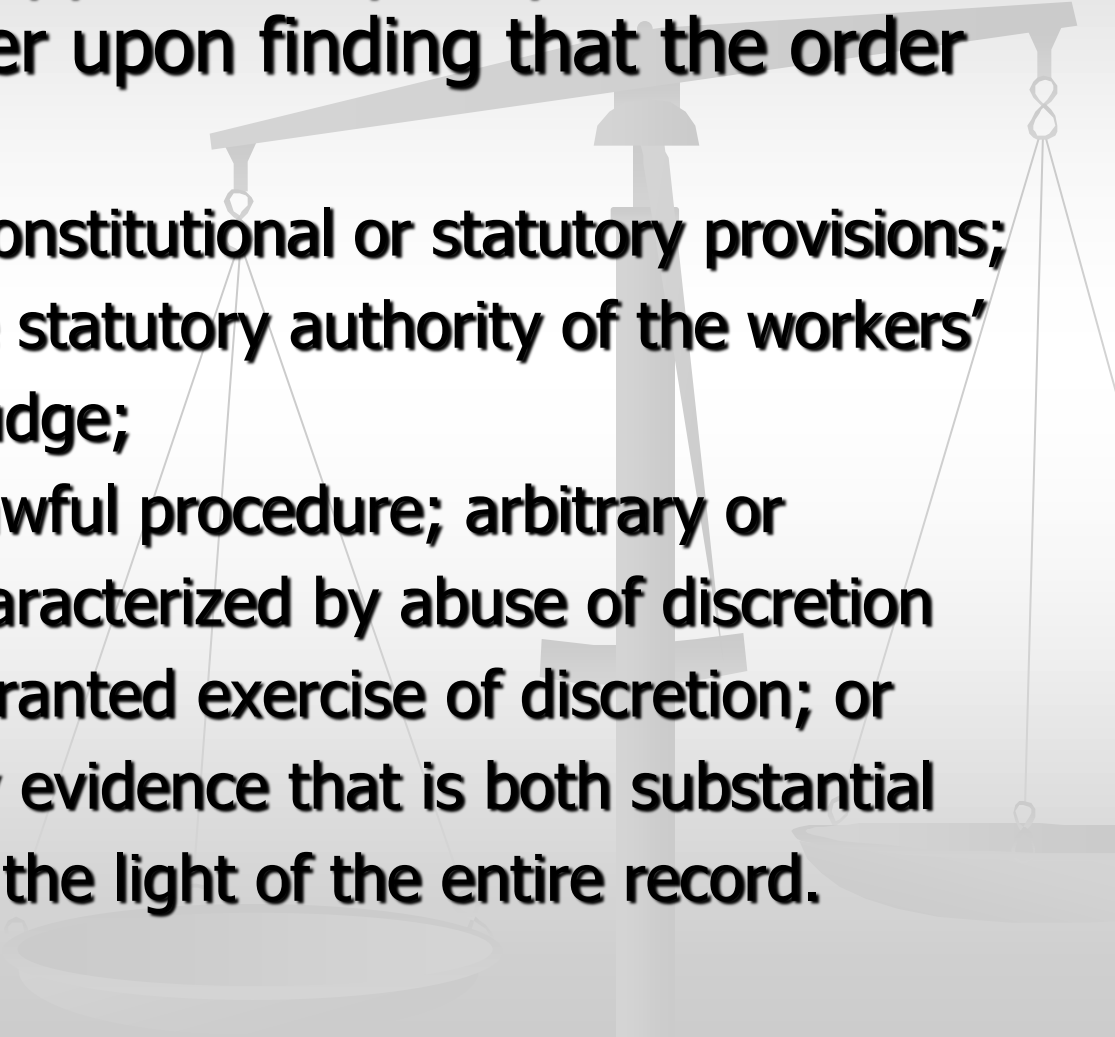
# Appeals of Compensation Orders

- After the appeal of a compensation order is filed, the parties shall have fifteen days to file briefs.
- The appeal shall be considered filed after the record has been transmitted to the Board by the clerk of the CWCC.
- The clerk shall provide notice once the appeal is filed and the parties shall have fifteen days following issuance of the notice to file briefs.

# Appeals of Compensation Orders

- **Appealing a compensation order to the Board will toll the time for filing an appeal to the Supreme Court.**
  - **The Board of WC Appeals will issue an order either affirming the compensation order and certifying it as final or remanding the case to CWCC with instructions.**
  - **After an order is certified as final, the parties shall have thirty days to appeal to the Supreme Court.**
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# Standard of Review

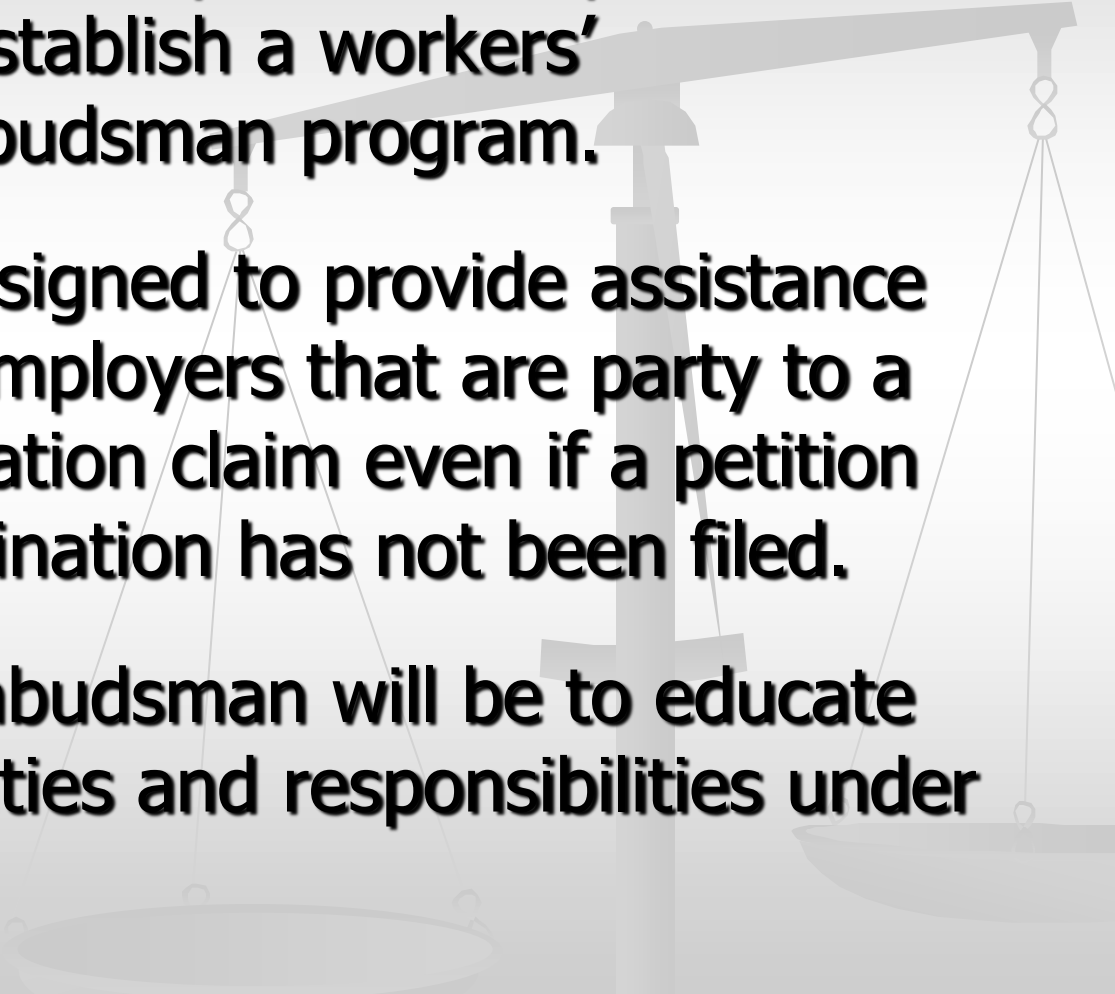
- The Board of WC Appeals may only remand a compensation order upon finding that the order was:
    - (A) In violation of constitutional or statutory provisions;
    - (B) In excess of the statutory authority of the workers' compensation judge;
    - (C) Made upon unlawful procedure; arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
    - (D) Unsupported by evidence that is both substantial and material in the light of the entire record.
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# Ombudsman Program

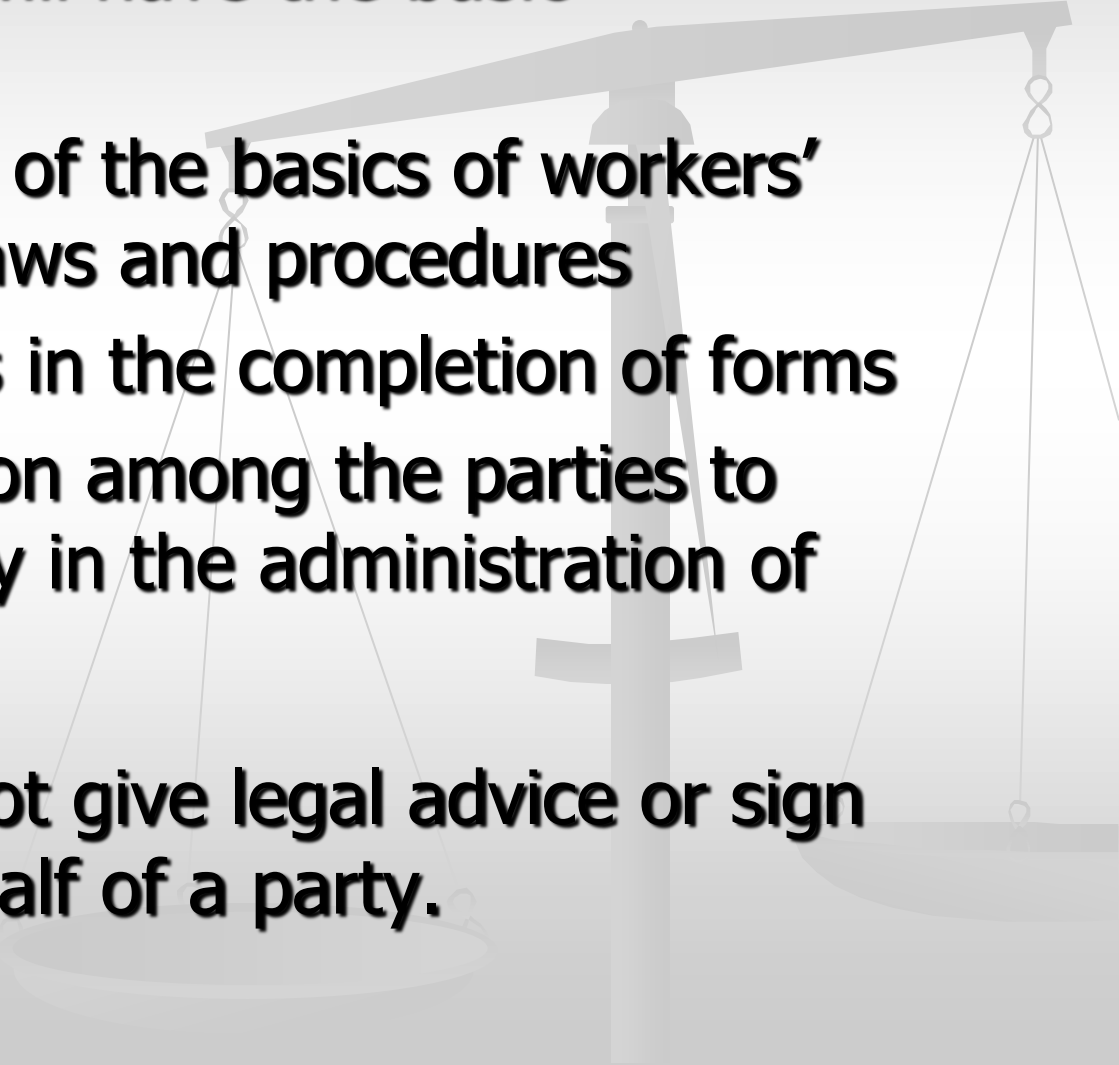




# Creation and Purpose

- Section 77 of Public Chapter 289 requires the Administrator to establish a workers' compensation ombudsman program.
  - The program is designed to provide assistance to employees or employers that are party to a workers' compensation claim even if a petition for benefit determination has not been filed.
  - The role of the ombudsman will be to educate parties on their duties and responsibilities under the law.
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# Duties of the Ombudsman

- The ombudsman will have the basic responsibilities of:
    - Advising parties of the basics of workers' compensation laws and procedures
    - Assisting parties in the completion of forms
    - Acting as a liaison among the parties to ensure efficiency in the administration of claims
  - Ombudsman cannot give legal advice or sign documents on behalf of a party.
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# Features of the Ombudsman Program

- All ombudsmen will have receive extensive training in Tennessee Workers' Compensation law and administrative rules.
- The services of an ombudsman are not available to any party that is represented by counsel.
- The parties are required to cooperate with the services provided by an ombudsman and failure to do so may result in penalization.
- Nothing that is discussed in the presence of an ombudsman is admissible as evidence in any other proceeding.

# Contact Information:

If you have questions about the law you may contact me in the following ways:

- [Josh.Baker@tn.gov](mailto:Josh.Baker@tn.gov)
- (615)253-6909

